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THE LIFE

OF THE FIRST

EARL OF SHAFTESBURY.

BY MR. R. B. SHAFTESBURY.

IN TWO VOLUMES.

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VOL. II.

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THE LIFE

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VOL. II.

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OF THE FIRST
EARL OF SHAFTESBURY,

FROM ORIGINAL DOCUMENTS IN THE POSSESSION
OF THE FAMILY.

BY MR. B. MARTYN AND DR. KIPPIS.

NOW FIRST PUBLISHED.

EDITED
BY G. WINGROVE COOKE, ESQ.

AUTHOR OF "MEMOIRS OF LORD BOLINGBROKE."

IN TWO VOLUMES.

VOL. II.

LONDON:
RICHARD BENTLEY, NEW BURLINGTON STREET.
Publisher in Ordinary to His Majesty.
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A LITTLE more than two months after the war had been declared with Holland, a battle was fought, on the 28th of May, between the Dutch and English fleets; in which engagement, besides a number of other gallant officers and persons of distinction, died the brave Earl of Sandwich,

A.D. 1672.

Battle.

Death of the
Earl of
Sandwich.

A.D. 1672. who became careless of his life * in consequence of having been stung with an unmerited reproach that had been cast on him by the Duke of York. He had lived in great friendship with Lord Ashley, and joined with him in an opposition to that interest which the duke supported. He saw the fatal tendency of the counsels which prevailed, and was so apprehensive of the consequences, that he used to tell his intimate friends, he believed the people of England must come to fighting again for their liberties.

The nation
dissatisfied
with the
war.

The war with Holland was so repugnant to the true interest of England, that it raised great discontents in the nation; and the court was soon distressed for want of supplies to carry it on. As Lord Ashley and Sir John Duncomb, from the time of the shutting up of the exchequer, had desisted from paying or borrowing money in the treasury, this was represented to the king as obstinacy, and a desire of obstructing his affairs; and the ill consequences of such a disunion were set before him in the strongest light, to induce him to remove Lord Ashley, or put the management of the treasury in a single person. The king, however, who had a love for Lord Ashley,

* Columna Rostrata, p. 217.

and a confidence in his abilities, was the less A.D. 1672. angry with his conduct, because he had strongly opposed the stop of the exchequer from the beginning. The popish junto, therefore, took a method to ruin him under the appearance of kindness, and advised the king to give him the staff of lord treasurer. They knew that the king, in consequence of his religious principles, and the supplies which he received from France, was confirmed in the measures into which he had entered; and they were as sensible that Lord Ashley would be an enemy to these measures. They thought, therefore, that if he refused the staff, he would incur the king's displeasure, and probably be removed from his employments; and if he accepted it, they believed it would give the parliament and the public an opinion that he was the chief, if not the sole, adviser of those unpopular counsels which had lately been followed; and, consequently, that he would be forced into their schemes, and be obliged to serve them in parliament.

Scheme to
make the
Earl of
Shaftesbury
lord trea-
surer.

Though Sir Thomas Clifford had the white staff in view, and the Duke of York's interest to gain it, yet, as he believed that Lord Ashley would not be continued long in the posses-

A.D. 1672. sion of it, he likewise concurred in the advice; especially, as he saw the parliament must meet to grant supplies for the war: and he thought that, after Lord Ashley had been exposed to the censure of the two houses, he himself might succeed him with the greater reputation.

The king
offers him
the white
staff:

The king approved of making Lord Ashley treasurer, and, as a previous step to it, advanced him to the dignity of the earldom of Shaftesbury. When he afterwards made him an offer of the staff, Lord Shaftesbury immediately penetrated the design with which it was proposed to him, and the difficulties that attended it. He saw an exchequer without credit, drained by the excessive expenses of the court; and the king, without money or resources, engaged in a war, contrary to the sense of the nation. Lord Shaftesbury was sensible, at the same time, how potent his enemies were at court, and how great their influence was in the house of commons. He formed, therefore, at once his resolution. He returned his thanks to the king for the honour designed him, but humbly begged to be excused, unless he might be invested with a sufficient power of making peace with the Dutch. Upon this condition, he said that he

would readily accept of the place, and undertake A.D. 1672.
to recover the credit of his majesty's exchequer
and affairs: but a compliance with this condition
did not agree with the designs of the junto.

The more averse he seemed to the place, the
more earnest they were with the king to press declines ac-
cepting it :
it upon him; and, accordingly, his majesty re-
solved to deliver it to him the Sunday follow-
ing: but Lord Shaftesbury receiving, on Friday,
some private intimations of the matter,* went
out of town to Lady Northumberland's at Pet-
worth, from thence to Mr. Norton's at South-
wick, and thence to Mr. Noel's (afterwards Earl
of Gainsborough) at Tichfield, whence he went to
his own house in Dorsetshire, where he stayed
five or six weeks. Before his return to Lon-
don, the affair was concluded, and the staff de-
termined to be given to Sir Thomas Clifford, given to Sir
Thomas
Clifford.
who was willing to accept it upon any terms.

Whilst the junto were thus working in secret Lord Shaf-
tesbury's
negotiation
with Mon-
sieur
Schrotter.
against Lord Shaftesbury, he was equally vigi-
lant against them and their designs. He saw
popery spreading in the nation; that its great

* Mr. Stringer writes, that nied Lord Shaftesbury in the
journey, who then told him his
reasons for it.
he knew the whole of this to
be true, because he accompa-

A.D. 1672. support was in the Duke of York, who was immoveable in his principles; and that the progress of it depended on the hopes of his succession. He formed, therefore, a design to remove the duke from the succession, in a manner that would soothe his ambition, be agreeable to his religion, add strength to the interest of England, and be a security against the rising greatness of France.

Lord Shaftesbury lived in friendship, at this time, with an ingenious person of the Saxon court, Mons. Schrotter, whose father had been chancellor to the elector, and who was himself in great favour and confidence with that prince. Mons. Schrotter was employed by the elector in transacting some affairs of consequence, and had an intimacy with his first minister, the Baron de Friesen. He had, also, no small interest in the Elector of Mentz, and kept up a constant correspondence with him on the subjects of natural philosophy and chemistry, which at that time were the favourite studies of many of the great men in Germany, and even of the princes themselves. With this gentleman Lord Shaftesbury concerted his plan,* which was drawn

* The original is among Lord Shaftesbury's papers.

out by Mons. de Schrotter in Latin, and delivered by him to Lord Shaftesbury, dated July the 11th, 1672, beginning with this observation, "that it was upon the business they had been talking of three days before."

A.D. 1672.

As the Emperor of Germany had no son, nor the expectation of having any by his empress, Mons. de Schrotter undertook to engage the two Electors of Mentz and Saxony to promote, by their interest with the emperor, the marriage of the Duke of York with an archduchess. The court of Vienna well knew that its chief hope lay in separating England from the friendship of France, and that this was the truest method of limiting or weakening her power. As the Austrian ministry could not but be sensible that in England the Duke of York was the chief support of the French interest, and that the proposed alliance would naturally draw him from it, it was thought that, for these reasons, the emperor would readily agree to the marriage, especially when recommended by the Electors of Mentz and Saxony, one of whom was head of the protestant, and the other of the Roman catholic interest in Germany.

Before a consummation of the marriage, it would

A.D. 1672.

Monsieur
Schrotter's
plan.

be necessary that the duke should be made a prince of the empire, that, instead of a portion in money, he might ask of the emperor a province upon the Rhine, near Alsatia, called Briscau,* a province that would be useful upon many accounts, and which the emperor would the more readily grant, as it lay remote from Vienna, and was much exposed to the incursions of the French.

To engage the emperor either to offer this province, or to grant it readily when asked, it would be highly expedient to procure the interest of the Count de Zinzendorff, first gentleman of the bedchamber to the emperor, and his chief favourite, whose known covetousness would render this easy to be effected; not to mention that the count would otherwise be glad to gain the Duke of York's favour, who might, in some urgent necessity, protect him against his numerous and powerful enemies at court.

By this marriage, being a prince of the empire, and possessing a province of Germany, the Duke of York might in time succeed to the emperor's hereditary dominions; and thus the way would be opened to his being elected King of the Romans, and obtaining the imperial seat. Unless,

* Or Brisgow.

however, he was admitted among the states of A.D. 1672. the empire, and declared a prince of it, he could gain none of these advantages; as strangers, by a fundamental law of Germany, are excluded from the imperial throne.

In support of this design, it was alleged, that no time or opportunity could ever be more favourable: since, as a war from France seemed to be impending over the Spanish provinces in Flanders, and not only the emperor himself, but the several states of Germany were in danger, it must be their common interest to choose a King of the Romans, and an associate of the empire; and to choose him from a nation whose alliance would be of the most consequence to them. Even those princes who inhabited the middle of Germany, and who seldom interested themselves in the wars in which the extreme parts were engaged, would now, when their neighbours were subdued, and the French drew nearer to them, consider their own condition, and would find it incumbent upon them to grant their contributions for the support of those troops which the princes, whose territories lay upon the borders, were forced to maintain for the safety and protection of their countries.

A.D. 1672.

As, however, these contributions were always granted with the utmost reluctance, the princes of Germany would readily embrace, and heartily promote, any scheme which might remove the danger of the French without bringing an expense and burthen upon themselves. Now no way of doing this could appear to them more effectual than by securing the friendship of England, which could not but be firmly established by their choice of the Duke of York for King of the Romans.

Lastly, the Jesuits, by whom almost all things are managed at the court of Vienna, would readily adhere to the interest of the Duke of York, as they were sensible how firmly he was attached to their order.

This is the substance of Mons. de Schrotter's plan: and as France was, at that time, in the possession of the Elector of Cologne's dominions; as it stood fair for an entire conquest of the Dutch and the Netherlands, and the princes of Germany were in the utmost consternation; the design might be considered as having some probability of success. Nevertheless, it does not appear that Lord Shaftesbury took any farther steps in it, which might partly be owing to the complicated

The scheme
dropped.

nature of the scheme itself, and, perhaps, still more to the death of the empress, and the marriage of the emperor with the archduchess of Inspruck; a circumstance which opened quite another prospect with regard to the succession to the empire. A.D. 1672.

This plan displays, however, the activity and energy of Lord Shaftesbury's mind, and shows how early he was providing in his thoughts a security against the duke's succession to the crown of England; and how anxious he was to oppose the designs of France upon Germany: for the French king had been concerting measures to get the dauphin* elected King of the Romans, though the dauphin was but ten years of age, and the laws of the empire required that the candidates should be seventeen.

A great magazine of corn, ammunition, and military stores, was provided by the French king upon the Rhine; and he had an army there, of eighty thousand men, under the command of the Prince of Condé, Marshal Turenne, and Marshal Crequi.

Lord Shaftesbury had always been zealous for

* Mons. Patin's Letters, vol. iii. No. 543, dated Paris, the 19th of December 1671.

A.D. 1672. supporting and extending the trade and navigation of England, and had attained an accurate and extensive knowledge in every branch of it. The king, by a commission under the great seal, dated September the 27th, 1672, appointed him president of the select council for trade, and for the care and improvement of the plantations, in the room of his friend the Earl of Sandwich. Lord Culpeper was vice-president; and Lord Gorges, Lord Allington, Mr. Brounker, Sir Humphrey Wynch, Sir John Finch, Mr. Walter, Mr. Slingsby, Colonel Titus, and Mr. Evelyn, constituted the rest of the council. Mr. Locke, by Lord Shaftesbury's interest, was made secretary.

Lord Shaftesbury appointed president of the council of trade.

Upon the resolution to advance Sir Thomas Clifford, who was created a baron, to the post of lord treasurer, it was necessary to remove Lord Shaftesbury from being chancellor of the exchequer.⁹⁰ As, therefore, the popish interest could not yet prevail with the king to lay him aside, they contrived that he should be appointed lord chancellor, which place would give him a more public appearance of acting with them than any other, and in which they thought he could

He is made Lord Chancellor of England.

⁹⁰ Or rather, perhaps, as he was useful to the king and his confidential counsellors as a minister, and dangerous to them as an opponent.

least obstruct their measures. Besides, they were A.D. 1672. in hopes that he would sink under the seals; for though, in his youth, he had been entered of Lincoln's Inn, he was never called to the bar:*

* There are some excellent pictures of him in his robes, as lord chancellor, drawn by Greenhill. One is in the present Earl of Shaftesbury's collection, one in the Duke of Dorset's, another in Earl Cowper's, and a fourth in the governor's room at the Charterhouse. In these pictures he is drawn in a brown gown, instead of a black one. This distinction of dress, the late Lord Chancellor Cowper said, was because Lord Shaftes-

bury had never been called to the bar.

The following copy of verses, written by Mr. Locke, may be some entertainment to the reader. They are in Mr. Locke's hand-writing, among other poetical performances of his, and, by the corrections in the manuscript, are evidently his first thoughts. They were addressed to Mr. Greenhill, with Cowley's Poems, in the year 1672, at which time the pictures were drawn.

TO MR. GREENHILL, WITH COWLEY'S POEMS.

COWLEY so writ, that easy 'tis to see,
In him the shapes of men and symmetry;
Thy pictures are so drawn, in them we find,
The inward make and temper of the mind.
Thus both the arts of fiction in you,
Cease to deceive, and are as nature true;
For in your matchless pieces may be seen
Strength, vigour, beauty, humour, life, and mien;
Which when we view, and sadly find that they
Are than ourselves less subject to decay,
We think ourselves the shadows which do fade,
And should be lost, but for your timely aid:
But to preserve, and make us lasting men,
Fate gave to thee thy pencil, him his pen.

A.D. 1672. they had no doubt, therefore, of his being so embarrassed in this employment, that he would quickly lose the reputation he had acquired.⁹¹ They thought, at least, that the great business of his office would not suffer him to be so often and so much with the king, to whom he gave his ad-

⁹¹ There is, among the MSS. in the British Museum, a letter from Shaftesbury to the Earl of Essex, in reply to a letter of congratulation which that nobleman had sent him upon his accession to the chancellorship.

“ Exeter House, 13th Nov. 1672.

“ I RETURN my humble thanks to your excellency for the favour and honour of your congratulation. I assure y^r Ex. the King c^d not have put a man in this place more y^r serv^t; and yet putting y^r letter and P.S. tog^r, I cannot but apprehend I have been misrepresented from hence to you as one that has spoken agst yourself, or some of y^r proceed^{gs}. If so, give me leave to say y^r intelligence out of Eng. has not been so good as your Ex^y ought to have, for I am sure the direct contrary is only true. I am the more jealous that this has been so, because I have been served in like manner with sev^l other persons, and upon several other occasions, by some worthy persons here that are exceedingly skilful in these lesser arts, but can do no business. Besides, my stars have not been very prop^s as to Irish aff^{rs} and governors; but I rely on your wisdom and goodness to overrule those stars, and that you w^d believe it impossible to me not to be infinitely ambitious of your friendship while you please to allow it me. I shall never omit anything that may make it appear how truly I am

“ Your Excellency’s very faithful friend and serv^t,

“ SHAFTESBURY.”

Aysc. Cat. 4164.

vice with an unusual sincerity and freedom. They A.D. 1672.
 were mistaken, however, in the former part of The man-
 ner in which
 he sus-
 tained his
 office.
 their design : for he acquitted himself so well in
 his high station, he heard causes with so much
 patience, and made his decrees with such discern-
 ment and justice, that few or none of them
 were afterwards reversed ; * and his character be-
 came more firmly established than ever. As his
 affability, quickness, and judgment rendered him
 agreeable in the court where he presided, the pe-
 culiar magnificence in which he lived, and the
 dignity with which he supported his office, gained
 him the reverence of the public ; so that he ac-
 quired an authority equal to his power.

[Roger North remarks upon Shaftesbury's con-
 duct while chancellor with his usual acrimony.
 It is not improbable that the earl's ignorance of
 the forms of his court might have led him to
 despise them. North says that he trampled on
 them all, and cut and slashed after his own fancy.
 "They know little," he continues, "that per-
 ceive not the difficulty of ordering matters in
 justice interlocutorily, upon the strength of abs-
 tract reasoning only, without help of stated

* Mr. Stringer says, he was Shaftesbury's decrees were re-
 versed.
 informed by some gentlemen
 of the law that none of Lord

A.D. 1672. rules and methods prefixed by practice and experience; but his lordship was of another sentiment, and intended the bar should know it. They soon found his humour, and let him have his caprice, and after, upon notice, moved him to discharge his orders; and thereupon, having the advantage upon the opening to be heard at large, they showed him his face, and that what he did was against common justice and sense; and this speculum of his own ignorance and presumption coming to be laid before him every motion-day, did so intricate and embarrass his understanding, that in a short time, like any haggard hawk that is not let sleep, he was entirely reclaimed." This is doubtless a very exaggerated account; but it is an error into which such a man was very likely to fall, and one also which would increase his popularity with the multitude.

The same author relates a whimsical anecdote having relation to Shaftesbury's chancellorship. It seems that it was usual for a judge to select a member of the bar to perform some offices, which from their nature necessarily produced a degree of private intimacy. In the time of the author of the Examen, the influence of this

person was considerable. “The chief practisers,” A.D. 1672. he says, “are usually very civil to the gentleman that is accounted the judge’s friend; and they desire to be in his company, to serve his turn with treats, and obtain instruction and inlet to other causes, and their own by spying out his humour, the judge’s designs and expectations, and what secrets relating to the court they can pump from him drunk and sober.”

One Mr. H——, who appears to have been a very silly fellow, stood in this relation to Shaftesbury: chosen probably because he was an acquaintance, and a neighbour in the country. His brethren of the bar did not fail in their usual convivial attempts; and one of them, at a meeting of this description, told him that he was not aware of the privileges of the situation he enjoyed. “The judge’s friend,” he said, “always had a right of preaudience at the bar, taking precedence even of the attorney-general.” H——, excited by the wine he had drunk, and by the persuasion of those around, was readily convinced; and he declared amid the applause of his companions, that he would assert his privilege on the morrow. The effects of his vanity did not pass away with the fumes of the wine: the

A.D. 1672. next morning the simpleton was in court; and when the attorney-general rose as usual in order to move first, he from without the bar called out to him: "Mr. Attorney, pray be pleased to move in your turn." "Sir Heneage Finch," says North, "then the attorney-general, looked back and stared, concluding the man mad or drunk; but the other persisted so much to be first heard, that the court had but authority enough to compel him, and none at all to persuade him, to be quiet." *

During Lord Shaftesbury's chancellorship he lived at Exeter-house in the Strand. We have, in *Rawleigh Redivivus*, an account of his procession thence to Westminster on the first day of term. Its length may be conjectured from the fact that all the barristers, all the students of the inns of court, and the sixty clerks of the chancery, were included in it; and its magnificence from the equipage of the chancellor himself, who, preceded by all the great officers with the insignia of his authority, rode on horseback richly arrayed, with the gentleman of his horse, a page, a groom, and six footmen walking along by his stirrup. North ridicules this

* North's Examen, p. 59.

equestrian procession, and the display which the judges made in their novel position : he says that, for want of gravity in the beasts, and too much in the riders, there happened some curveting which made no little disorder ; and Judge Twisden, to his great affright and the consternation of his grave brethren, was laid along in the dirt.] A.D. 1672.

When Lord Treasurer Clifford took the oaths before him, Lord Shaftesbury made an elegant speech, in which were great encomiums upon the king ; whose natural disposition he much commended, applying to him the character of the Emperor Titus, *DELICIE HUMANI GENERIS*. He put Lord Clifford in mind of his illustrious ancestors, as an incitement to his acting honourably in his station ; and, by way of insinuating his advice, he concluded with a wish, “ that he might exceed all his predecessors in that place ; the abilities and fidelity of the renowned Lord Burleigh ; the sagacity, quickness, and great despatch of his son the Lord Salisbury ; and the uprightness, integrity, and wisdom of that great man that went last before him, the Earl of Southampton.”

His speech
at swearing
in the Lord
Treasurer
Clifford.

As Lord Shaftesbury, in this speech, testified his respect for the memory of his friend and

A.D. 1672. relation, Lord Southampton, he likewise showed that he had no resentment against Lord Clifford for obtaining the first place in the ministry. At the same time, in a delicate manner, he gave him a hint of his knowing the designs which had been formed against himself by the Duke of York and Lord Clifford; for, speaking of the king, he said, “no subtle insinuations of any near him, nor the aspiring interest of a favourite, shall ever prevail against those that serve him well; nor can his servants fear to be sacrificed to the malice, fury, or mistake of a more swelling popular greatness.”

Lord Shaftesbury's integrity as chancellor of the exchequer.

Lord Shaftesbury had been chancellor of the exchequer above eleven years, and, after the death of Lord Southampton, he was one of the commissioners of the treasury; both which trusts he discharged with remarkable integrity. He sought no private advantage, though he had such extraordinary opportunities, by the farming of the revenue, whilst he was chancellor of the exchequer: nor was he ever charged with any misapplication of the public money, or with obtaining any grant for his own benefit. He was always for promoting a greater frugality than was agreeable either to the king or those

about him. The king, however, retained a
 kindness for him, as he took delight in his con-
 versation; and was not more pleased with his
 judgment on serious occasions, than with his
 wit at other times. Lord Shaftesbury was as
 distinguished for the brightness and readiness of
 his turns, and the quickness of his repartees, as
 any of those who had the character of being
 only wits. Though he seldom or ever began
 the attack, he always so well defended himself,
 that the aggressors were willing to yield the field
 to him.

A.D. 1672.

The king
 pleased
 with his
 conversa-
 tion.

The king, who had himself a great share of
 wit, loved it in others; and was ever ready to
 forgive a jest, though retorted on himself. One
 day, as Lord Shaftesbury was coming into the
 presence, the king said aloud to the queen, "Here,
 madam, is the greatest whoremaster in Eng-
 land:" Lord Shaftesbury, bowing to the queen,
 gravely replied, "Of a subject, madam."⁹² An-

Instances
 of his wit.

⁹² If this be the true version of this often-told anecdote, and this retort was really made in the presence of the queen, it evinces more wit than good taste in the chancellor, who must have known that the retort, although a mere joke to Charles, was a bitter jest to the injured queen. According to North, Shaftesbury was exceeded in his gallantries by few of the courtiers. There was a deformed old gentleman, named Sir P.

A.D. 1672. other time, the king being at dinner at Lord Shaftesbury's, the Duke of Lauderdale, going out of his sphere, attempted to play upon Lord Shaftesbury, and in a manner which did no great honour to his wit or politeness. "I think, sir," said he to the king, "there is a very good saying, 'that fools make feasts, and wise men eat them.'" "There is another," said Lord Shaftesbury, "as good, 'Wits make jests, and fools repeat them:'" upon which the king, turning to the duke, said: "Take my advice; know your men before you endeavour to be witty on them."

Writs issued for electing members before the meeting of parliament.

Immediately after Lord Shaftesbury had received the seals, he was commanded by the king to issue writs for electing members of the house of commons, before the meeting of the parliament, in the room of others who were deceased.

This not a new proceeding.

Bishop Burnet, willing to load Lord Shaftesbury with the weight of this proceeding, says, "he resolved to recommend himself to the con-

Neal, who, from his constant attention in entertaining the earl's mistresses when they walked in Hyde Park, was called Lord Shaftesbury's groom; this, at least, is what I suppose Roger North (an attorney-general and an author of great gravity) intended to convey by the expression, "he watered his mares in Hyde Park with Rhenish wine and sugar, and not seldom a bait of cheesecakes."—*Examen*, p. 60.

fidence of the court by a strain never before A.D. 1672. thought of." The same thing, however, had been done in the three preceding reigns.

In Queen Elizabeth's reign several writs were issued out, in time of prorogation, by Sir Nicholas Bacon and Sir Thomas Bromley, lord chancellors, for electing members, not only in the room of those who were dead, but of others who were living, but could not attend, by sickness, or absence in the queen's service abroad. Particularly, on the 19th of January 1580-1,* the affair being controverted in the house of commons, it was determined that several members, chosen by writs issued by the lord chancellor during a vacation, in the room of other members who were not dead, but only sick of durable diseases, as agues, &c. or absent in her majesty's service abroad, should be received and allowed. Nevertheless, on the 18th of March afterwards, being the last day of that session, it was adjudged to the contrary, that such members as were chosen in the room of others who were still living, should be excused in having sat there till that time, but be thenceforth discharged from their places; with some exceptions, however, where the old members appeared

Practised
in Queen
Elizabeth's
reign.

* D'Ewes's Journals.

A.D. 1672. to be incurable: but no order was made against the members chosen by the chancellor's writs in the room of such as were deceased. The commons, however, to assert their ancient right, at the same time resolved, that, during the time of the sitting of parliament, there should not any writ go out without the warrant of the house first directed for the same to the clerk of the crown, according to the ancient jurisdiction and authority of the house.

In James
the First's
reign.

In the second and third years of the reign of King James the First, when Lord Ellesmere was lord chancellor, several writs were issued during prorogations; and, on the 5th of November 1605,* a committee of the house of commons was appointed to make an inquiry into them. But there were no farther proceedings by the house, during that session, upon the affair; and therefore, in the two following years, the lord chancellor continued to issue the writs in the same manner.

In Charles
the First's
reign.

The parliament, which began in the third year of King Charles the First, was prorogued from June the 26th, 1628, to the 20th of October, and

* Commons' Journals.

farther prorogued to the 20th of January; during A.D. 1672. which prorogations six writs were issued by the Lord Keeper Coventry. But, on the 21st of January, a question being moved about the lord keeper's making out writs in time of prorogation, it was referred to the committee of privileges to consider of it; who, on the 4th of February, made a report, "That the clerks of the crown office had brought precedents, appearing in their books from the 14th of Elizabeth, whereby it appeared, that, in the prorogations of the parliament from the 14th to the 23rd of Elizabeth, forty-six writs had been issued; and in King James's reign (besides what were issued in prorogations) two writs were made out in the time of adjournment; and that the clerks even claimed, in times of prorogation, to make out writs of course, without order from the lord keeper: yea, that they had done so sometimes in times of adjournment." The committee therefore left the matter to the house, without any opinion of their own. The house came to no general resolution against the lord chancellor's granting of writs, but ordered a warrant, under the speaker's hand, for a supersedeas, to discharge one of the six writs above mentioned, viz. for

A.D. 1672. Hertford, in the room of Sir Charles Morrison, and for a new writ to be issued instead thereof.⁹³

In this very parliament of King Charles the Second, before Lord Shaftesbury was chancellor, a method was introduced in the house, which directly tended to countenance the like attempt in the crown; for, in the sessions of 1669 and 1670, the commons, instead of ordering their speaker to issue his warrant to the clerk of the crown, only ordered that the speaker should certify the vacancy to the lord keeper, desiring him that a writ might issue forth under the great seal for the election of a new member.

The king and his brother (by whose influence

⁹³ The following version of Lord Shaftesbury's conduct in this affair is extracted by Sir J. Dalrymple from a MS. of Lord Keeper Guildford, then in the possession of Dr. North.

“ Shaftesbury issued writs for election, without the speaker's leave, to bring in a few of his own creatures to be burgesses in the west country.

“ When Shaftesbury found he was to be questioned first, and for what he had said and done, he fell to his old courses by which he used to save himself in former changes, and dealt underhand with the party that opposed the court, and recanted publicly and suddenly by disapproving the declaration, and thereby saved himself with them who thought it would be of more service to have the king's counsels betrayed than to make the Earl of Shaftesbury an example.”

he chiefly acted) were intent upon reviving by degrees every claim or pretence of prerogative; and, therefore, when the way was artfully paved to it by engaging the commons to certify the vacancies to the lord keeper, it was put upon Lord Shaftesbury to bring the affair to a conclusion, thereby to establish this power in the crown; or, if the design failed, to expose him to the resentment of the house. Lord Shaftesbury was obliged either to obey the king's command, or to resign the seals which he had just received, and, by so doing, entirely to break with the king. This he was unwilling to do whilst the least glimpse of hope remained of diverting him from those dangerous measures in which he was engaged.

A.D. 1672.
Ld. Shaftesbury's views in submitting to issue the writs.

Lord Shaftesbury saw the great progress of popery; he knew the influence which the professors of it, and the agents of France, had in the council; and that the affairs of the public were running into confusion: he was, therefore, determined to stand in the breach as long as possibly he could. He was satisfied that the commons would assert their ancient jurisdiction, and was sensible that a spirit raised in one point would spread and break forth in others. His conduct

A.D. 1672. was understood by many in the house: for Sir Thomas Littleton, Mr. Powle, and others, who pushed on the inquiry into the affair of the writs, were his particular friends, and the former was one of the tellers for the yeas for a committee to be appointed to inspect the precedents. The commons resolved, that all the elections upon the writs issued since the former session, should be void, and that Mr. Speaker should issue out his warrant to make out new writs for those places; but, in their resolutions, there is not a single word which carries any kind of censure or reflection on the chancellor.

His conduct
understood
in the house.

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Lord Clifford and the rest of the junto, who were enemies to Lord Shaftesbury, had, before the meeting of the parliament, engaged their friends in the house to attack him upon his granting warrants for the writs;* but Lord St. John, (afterwards Duke of Bolton) Lord Russell, Sir Thomas Littleton, and other members of the

* Bishop Burnet says, "he knows the house intended to impeach Lord Shaftesbury for this among other things; but whether any elections were made upon these writs, he cannot tell." It is very surprising that a man should be so much in the secret of affairs, and at the same time be ignorant of so known a fact as the election and expulsion of several members in consequence of the writs.

country party, were desirous of preserving him in his station, as the only man then at court able to stem the popish interest. They resolved, at the first meeting, after the expulsion of the new members, to turn the power of the house to the opposition of popery, which was advancing in a very open manner.

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At the first meeting of the parliament, on the 4th of February 1672-3, Lord Shaftesbury gave an instance of the greatness of his spirit, which showed likewise upon what terms he stood with the Duke of York. At the Restoration, the Dukes of York and Gloucester had desired the Earl of Manchester to ask the house of lords "what places should be provided for them to sit in. The house, the same day (May the 30th, 1660,) appointed a committee of six lords to attend the king, and acquaint him that there being no precedent for them to govern themselves by, they desired his majesty would please to determine the places himself: and the committee immediately returned, and reported, by the Earl of Northumberland, that his majesty said, he conceived the seat on the right-hand of the state, where the King of Scots was anciently wont to sit, would be of no more use, seeing that title was

Remark-
able in-
stance of
his great
spirit.

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involved in himself; that he farther said, in the parliament at Oxford he himself sat in that seat as Prince of Wales; therefore he desired that place might be reserved for the Prince of Wales, and the place on the left-hand of the state might be fitted speedily for his brothers; and accordingly the house gave directions to have it done.* Some years afterwards, upon the queen's apparent barrenness, the Duke of York being looked on as the certain successor to the crown, and his power increasing at court, he took the chair on the right-hand of the throne. Lord Chancellor Shaftesbury, the first day he sat as speaker, resolved to replace the duke in his proper seat. He informed him that he was in the wrong chair, and that his place was on the other side of the throne, as only heir presumptive. The duke being unwilling to quit his seat, Lord Shaftesbury told him that he could not proceed upon business till the house was in form. At length the duke was obliged to submit, but said, in a passion, "My lord, you are a rascal and a villain." He, with great composure, immediately replied, "I am much obliged to your royal highness for not calling me likewise a coward and a papist." If Lord Shaftesbury, instead of this re-

* Lords Journals.

ply, had complained to the house of the indignity offered to the speaker in a discharge of his duty, the house must have resented it; but he had too much spirit to make any complaint.*

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The king, in his speech to both houses, told them, that he had been obliged to enter into a war with Holland, and that, "before his declaration of the same, he had put forth a declaration for indulgence to dissenters, and had found the good effects of it, by securing peace at home when he was engaged in a war abroad; that he never intended the papists, by this declaration, should have any other liberty but the freedom of their religion in their own houses; and that he was resolved to stick to his declaration, and left the rest to his chancellor."

Summary
of the king's
speech to
Parliament,
Feb. 4,
1672-3.

When the speech was finished which was delivered by the lord chancellor, the king added to what he had said before, the following words: "One thing I had forgot to mention to you, which happened during this prorogation. I did give order that some writs might issue out for the

* After the seals were taken from Lord Shaftesbury, the Duke of York returned to the seat on the right-hand of the throne, as appears by the following words in Lord Shaftesbury's speech in 1680; where, complaining of the power and influence of the duke, he says, "he takes his seat as Prince of Wales."

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election of members instead of those that are dead, to the end the house might be full at their meeting; and I am mistaken if this be not done according to former precedents. But I desire you, that you fall not to any other business till you have examined that particular, and I doubt not but precedents will justify what is done. I am as careful of all your privileges as of my own prerogative."

Offensive
expression
in the lord
chancellor's
speech.

In the speech delivered by the chancellor was this expression of Cato the Censor, when he was exciting the senate to a war with the Carthaginians, *DELEND A EST CARTHAGO*; which was applied to Holland, and gave the nation a general and just offence.

[This speech is remarkable for the bold and uncompromising manner in which it defends every ministerial measure of the time, and for the outcry which it occasioned. It is easy to discover why it was originally omitted here, but it certainly deserves insertion.

"My lords, and you the knights, citizens, and burgesses of the house of commons; the king hath spoken so fully, so excellently well, and so like himself, that you are not to expect much from me. There is not a word in his speech that

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hath not its full weight, and I dare with assurance say, will have its effect with you. His majesty had called you sooner, and his affairs required it, but that he was resolved to give you all the ease and vacancy to your own private concerns, and the people as much respite from payments and taxes, as the necessity of his business or their preservation would permit. And yet, (which I cannot but here mention to you,) by the crafty insinuations of some ill-affected persons, there have been spread strange and desperate rumours, which your meeting together this day hath sufficiently proved both malicious and false. His majesty hath told you that he is now engaged in an important, very expensive, and, indeed, a war absolutely necessary and unavoidable. He hath referred you to his declaration, where you will find the personal indignities by pictures and medals, and other public affronts, his majesty hath received from the States; their breach of treaties both in the Surinam and East India business: and at last they came to that height of insolence as to deny the honour and right of the flag, though an undoubted jewel of this crown never to be parted with, and by them particularly owned in the late treaty of Breda, and never

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contested in any age. And whilst the king first long expected, and then solemnly demanded, satisfaction, they disputed his title to it in all the courts of Christendom; and made great offers to the French king if he would stand by them against us. But the most Christian King too well remembered what they did at Munster, contrary to so many treaties and solemn engagements, and how dangerous a neighbour they were to all crowned heads. The king and his ministers had here a hard time, and lay every day under new obloquies: sometimes they were represented as selling all to France for money to make this war; Portsmouth, Plymouth, and Hull were to be given into the French hands for caution. The next day news came that France and Holland were agreed. Then the obloquy was turned from treachery to folly: the ministers were now fools that some days before were villains. And indeed the coffee-houses were not to be blamed for their last apprehensions; since, if that conjunction had taken effect, then England had been in a far worse case than now it is, and the war had been turned upon us. But both kings, knowing their interest, resolved to join against them who were the common enemies to all monarchies, and, I may

say, especially to ours, their only competitor for trade and power at sea, and who only stand in their way to an universal empire as great as Rome. This the States understood so well, and had swallowed so deep, that, under all their present distress and danger, they are so intoxicated with that vast ambition, that they slight a treaty and refuse a cessation. All this you and the whole nation saw before the last war; but it could not then be so well timed, or our alliances so well made. But you judged aright that at any rate, '*delenda est Carthago*,' that government was to be brought down; and therefore the king may well say to you, it is your war. He took his measures from you, and they were just and right ones; and he expects a suitable assistance to so necessary and expensive an action, which he hath hitherto maintained at his own charge, and was unwilling either to trouble you, or burthen the country, until it came to an inevitable necessity. And his majesty commands me to tell you, that unless it be a certain sum, and speedily raised, it can never answer the occasion.

“ My lords and gentlemen, — Reputation is the great support of war or peace. This war had never begun, nor had the States ever

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slighted the king, or ever refused him satisfaction, neither had this war continued to this day, or subsisted now, but that the States were deceived in their measures, and apprehended his majesty in that great want of money that he must sit down under any affronts, and was not able to begin or carry on a war. Nay, at this day the States support themselves amongst their people by this only falsehood,—‘that they are assured of the temper of England and of the parliament, and that you will not supply the king in this war; and that, if they can hold out till your meeting, they will have new life, and may take new measures.’ There are lately taken two of their principal agents, with their credentials and instructions to this purpose, who are now in the Tower, and shall be proceeded against according to the law of nations. But the king is sufficiently assured of his people, knows you better, and can never doubt his parliament. This had not been mentioned, but to show you of what importance the frankness and seasonableness of this supply is, as well as the fulness of it. Let me say, the king hath brought the States to that condition, that your hearty conjunction at this time, in supplying his majesty, will make

them never more formidable to kings, or dangerous to England. And if, after this, you suffer them to get up, let this be remembered,—the States of Holland are England's eternal enemy both by interest and inclination.

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“In the next place to the supply for the carrying on of the war, his majesty recommends to you the taking care of his debts. What you gave the last session did not near answer your own expectation. Besides, another considerable aid you designed his majesty, was unfortunately lost in the birth; so that the king was forced, for the carrying on of his affairs, much against his will, to put a stop to the payments out of the exchequer. He saw the pressures upon himself, and growing inconveniences to his people, by great interest; and the difference, through all his business, between ready money and orders. This gave the king the necessity of that proceeding, to make use of his own revenue, which hath been of so great effect in this war. But, though he hath put a stop to the trade and gain of the bankers, yet he would be unwilling to ruin them, and oppress so many families as are concerned in those debts: besides, it were too disproportionable a burthen upon many of his good subjects. But neither

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the bankers nor they have reason to complain, if you now take them into your care, and they have paid them what was due to them when the stop was made, with six per cent. interest from that time. The king is very much concerned, both in honour and interest, to see this done: and yet he desires you not to mis-time it, but that it may have only the second place; and that you will first settle what you intend about the supply.

“ His majesty hath so fully vindicated his declaration from that calumny concerning the papists, that no reasonable scruple can be made by any good man. He hath sufficiently justified it by the time it was published in, and the effects he hath had from it; and might have done it more, from the agreeableness of it to his own natural disposition, which no good Englishman can wish other than it is. He loves not blood, nor rigorous severities; but where mild or gentle ways may be used by a wise prince, he is certain to choose them. The church of England, and all good protestants, have reason to rejoice in such a head and such a defender. His majesty doth declare his care and concerns for the church, and will maintain them in all their rights and privileges, equal, if not beyond any of his predeces-

sors. He was born and bred up in it; it was that his father died for. We all know how great temptations and offers he resisted abroad when he was in his lowest condition; and he thinks it the honour of his reign that he hath been the restorer of the church: it is that he will ever maintain, and hopes to leave to posterity in greater lustre, and upon surer grounds, than our ancestors ever saw it. But his majesty is not convinced that violent ways are the interest of religion or of the church.

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“There is one thing more that I am commanded to speak to you of, which is, the jealousy that hath been foolishly spread abroad of the forces the king hath raised in this war; wherein the king hath opened himself freely to you, and confessed the fault on the other hand: for, if this last summer had not proved a miracle of storms and tempests, such as secured their East India fleet and protected their sea-coasts from a descent, nothing but the true reason (want of money) could have justified the defect in the number of our forces. It is that his majesty is providing for against the next spring, having given out orders for the raising of seven or eight regiments more of foot, under the command of persons of the greatest fortunes and

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quality. And I am earnestly to recommend to you, that in your supplies you will take into your consideration this necessary addition of charge.

“ And after his majesty’s conclusion of his speech, let me conclude,—nay let us all conclude,—with blessing God and the king : let us bless God that he has given us such a king, to be ‘ the repairer of our breaches’ both in church and state, and ‘ the restorer of our paths to dwell in :’ that, in the midst of war and misery, which rages in our neighbour countries, our garners are full, and there is no complaining in our streets ; and a man can hardly know there is a war : let us bless God that has given this king signally the hearts of his people, and most particularly of this parliament, who, in their affection and loyalty to their prince, have exceeded all their predecessors ; a parliament with whom the king hath many years lived with all the caresses of a happy marriage. Has the king had a concern ?—you have wedded it. Has his majesty wanted supplies ?—you have readily, cheerfully, and fully provided for them. You have relied upon the wisdom and conduct of his majesty in all his affairs, so that you have never attempted to exceed your bounds, or to impose upon him : whilst the king, on the other hand,

hath made your counsels the foundations of all his proceedings ; and hath been so tender of you, that he hath upon his own revenue and credit endeavoured to support even foreign wars, that he might be least uneasy to you or burthensome to his people. And let me say, that though this marriage be according to Moses' law, where the husband can give a bill of divorce, put her away, and take another, yet, I can assure you, it is as impossible for the king to part with this parliament, as it is for you to depart from that loyalty, affection, and dutiful behaviour you have hitherto showed towards him. Let us bless the king for taking away all our fears, and leaving no room for jealousies ; for those assurances and promises he hath made us. Let us bless God and the king that our religion is safe ; that the church of England is the care of our prince ; that parliaments are safe ; that our properties and liberties are safe. What more hath a good Englishman to ask but that this king may long reign ; and that this triple alliance of king, parliament, and people, may never be dissolved."]

Lord Shaftesbury having been much reflected on by Bishop Burnet, and other writers, for this speech, it may be proper to leave a few observa-

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Observa-
tions upon
it.

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tions with the reader, and let him form his own judgment of the matter.

When the chancellor delivered this speech, the king was still sitting on the throne, and in his robes.

He began the speech with these words, "My lords, and you the knights, citizens, and burgesses of the house of commons." Whenever the chancellor uses this form in speaking, it is known to be in effect the king's speech, and that he is only the mouth by which it is delivered. He cannot as a private lord, or as lord chancellor, without the king's command, address himself in this manner to the two houses.

The chan-
cellor only
spoke *ex*
officio.

The speeches usually delivered by the lord chancellor at the meeting of parliament were explanatory of the king's. They were drawn up in council, and so were made acts of state, which the chancellor was obliged, *ex officio*, to repeat, without a power in himself to add, diminish, or alter them in any particular.

To make it evident that they were drawn up in council, and that this was the constant form quite through King Charles's reign, let it be observed, that when Sir Orlando Bridgeman, as lord keeper, had the seals before Lord Shaftesbury,

and Sir Heneage Finch had them after, with the same title, the king always ended with these words, "I leave the rest to my lord keeper;" and the lord keeper began in the words before mentioned, "My lords," &c. Now the lord keeper, not being a lord of parliament, had no right to speak anything in the house but what was in direct command from the throne; yet it may, with the same propriety, be said, that the lord keeper made a speech at such a time in the house of lords, as that Lord Shaftesbury did when he delivered the *delenda est Carthago*.

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The houses were accustomed to return thanks to the king for the speeches; and it appears, by the journals, that they used to desire the king, that his and the lord chancellor's, or lord keeper's, speeches might be printed: but the king had no power to order the printing of a private speech.

Mr. Stringer asserts, that Lord Shaftesbury had actually prepared a speech, which was afterwards entirely changed in the council. This, he says, he more particularly remembers, because Lord Shaftesbury, before he carried it to the king and council, desired him to transcribe two copies of it, one to be entered in the journals of the house of lords, the other in the journals of the house of

Mr. Stringer's account
of the affair,

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commons: at the same time he complained that it was much more troublesome to him to learn even his own speech, and speak it in the very words it was drawn in, than it would be to speak to the same purpose extempore.

and Mr. Le
Clerc's.

Mr. Le Clerc gives the following account of this affair.* “It is known that King Charles the Second at that time entered into a war, jointly with France, against the United Provinces; but as the money, with which France was to furnish him for this, was not sufficient, he was willing to try if he could get it from his parliament. For this purpose, a draught was made in council of what the chancellor should say, after the king had done speaking, to exhort the parliament to approve of the war which the king had declared against the United Provinces. The first sketch of the speech was thought too weak by the king and council, and therefore altered, contrary to the advice of the lord chancellor; and they inserted these words of Cato, *DELEND A EST CARTHAGO*, as if it was the interest of England that Holland should be entirely ruined. This being resolved on, the chancellor was obliged to deliver the speech as formed by them.

* Bibliothèque Choisie, tom. vi. p. 362.

“ My Lord Shaftesbury, upon this, expressed great uneasiness to Mr. Locke, and another of his friends,* who has since left an account of it in manuscript. Nevertheless, the chancellor was only looked upon as the mouth of the king; not speaking in his own character, and even often contrary to his sentiments.

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“ The Earl of Shaftesbury was obliged to learn the speech by heart; and, though he had a great facility in speaking, and an extraordinary presence of mind, he was so much disordered, that he kept Mr. Locke behind him with the speech in his hand, in order to help his memory if he should falter.

“ This affair made a great noise in Holland; and those who did not know that the lord chancellor spoke only *ex officio*, and that these were not his own sentiments, conceived a bad opinion of him.”

Though Bishop Burnet says, “ Lord Shaftesbury made a base complying speech in favour of the court and the war, yet he acknowledges that, after Lord Clarendon’s time, who had been used to draw up all the speeches, these were formed by the council in general, one putting in one thing, and one another.”

Bishop
Burnet’s ac-
knowledg-
ment.

* This was probably Mr. Stringer.

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Duke of
Buckingham's testi-
mony.

As a confirmation of what Mr. Le Clerc says, that this speech was contrary to the sentiments and advice of Lord Shaftesbury, it may be right to mention, once more, the question which was put to the Duke of Buckingham by the speaker of the house of commons, and the duke's answer.

Question XI. "By what counsel was the war begun without the parliament, and thereupon the parliament prorogued?"

Answer. "My Lord Shaftesbury and I were for advising with the parliament, and averse to the prorogation."

Lord Clarendon's
conduct in
a similar
case.

During the first Dutch war, when the parliament met at Oxford, October the 10th, 1665, the king, in his speech, demanded a supply for carrying on the war; and, when he had finished his speech, Lord Chancellor Clarendon delivered one, as mentioned before, in which he set forth the several injuries and insolencies received from the Dutch, and the necessity of vindicating the rights and honour of the nation. Yet Lord Clarendon was known to be averse to the war, and has never been censured for his speech on that occasion.

If the reader, still dissatisfied with Lord Shaftesbury's delivering this speech, is of opinion that he should rather have given up the seals, it ought

to be considered that the war had been entered into almost a year before, and his leaving the court could not prevent the continuance of it; that this meeting of the parliament was owing to his advice and interest with the king; and that, if he had resigned his office, and quitted his station near the king, the houses would probably have been soon prorogued, and, consequently, the great designs which he had in view would have proved abortive.⁹⁴

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It is plain, from the great honours which the Dutch paid to Lord Shaftesbury when he retired into Holland, (as will appear in the sequel of his life,) that they did not think him the author of

⁹⁴ This elaborate apology is neither very new nor very successful. The same excuse was advanced at the time, and was afterwards severely handled by Roger North in his "Reflections on Mr. Le Clerc's Life of Mr. John Locke." Sir Walter Scott says, speaking of this speech, "The best apology offered for him by his defenders is, that being chancellor he was the mouth and organ of the council-board, and was obliged to deliver their sentiments, however little they might accord with his own. Whether he ought to have retained his office under such circumstances is a different question, which it is not difficult for integrity to answer." — *Somers' Tracts*, vol. viii. p. 37. The argument advanced in the text against this course of conduct, would be equally applicable in defence of any conduct of an able minister, however infamous that conduct might be.

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the speech above mentioned. On the contrary, they knew that he had given advice to the king which was evidently for their safety, upon the following occasion.

Ld. Shaftesbury's advice to the king in favour of the Dutch.

When the French monarch had made such a progress in his conquests that he came down to Utrecht, and struck the Dutch with such a consternation that they despaired of saving their country, Lord Shaftesbury used his utmost endeavours to rouse his master into a just attention to the designs of France, and a proper spirit for the interest of Europe.⁹⁵ He laid before him the fatal consequences of the French king's success, and the necessity of sending an embassy to stop his progress, in so clear a light, that Charles began to open his eyes. Accordingly, he sent the Duke of Buckingham, Lord Arlington, and (by Lord Shaftesbury's advice) Lord Halifax, to the French king at Utrecht, with proposals of peace. Lord Halifax had not, at that time, entered into

⁹⁵ In 1681, Barillon writes, that when Shaftesbury, at the end of the Dutch war, was advising Charles to quit the French and make a Spanish alliance, Charles asked him how much the Spaniards had given him? He answered, "Nothing at all." "Then," said the king, "you owe them nothing, for they offered Arlington forty thousand pounds."

the court measures. After the ambassadors had met together at the Hague, they made joint application to Louis, but their interposition with him was ineffectual; for he considered this embassy as forced, in a manner, upon King Charles, who would not have steadiness to support his own remonstrances; and therefore he slighted them.

A. D.
1672-3.

CHAPTER II.

Proceedings of Parliament.—Supply granted.—Address against the Declaration of indulgence. — Opinion of the House of Lords.—Review of Lord Shaftesbury's Conduct with regard to this measure.—Declaration cancelled.—Test Act. — Lord Shaftesbury's opposition to the Popish Ministers.—Conclusion of his Speech to the Parliament.—His Address to the King.—Is dismissed from his office of Chancellor.—Review of his Political conduct.

A. D.
1672-3.

Proceed-
ings of par-
liament.

THE parliament answered the call thus made upon them. The house of commons immediately voted the king a supply of an eighteen months' assessment, of seventy thousand pounds a month. This was designed by the popish junto to raise an army, which was soon formed and encamped at Blackheath. Immediately after voting the supply, the commons addressed the king to call in his declaration of indulgence, which they un-animously voted to be against law. They ordered a bill to be brought in for the relief of the dissenters, by which all the penalties in the act of

uniformity were removed, and nothing required but taking the oaths of allegiance and supremacy. They presented to the king their complaints on the growth of popery, and desired that he would issue out a proclamation to command all priests and jesuits (with exception of those in attendance on the queen) to depart the kingdom within thirty days.

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1672-3.

The vote of the house of commons against the indulgence was so disagreeable to Charles and the junto, that it was debated in the cabinet council,* whether the king should not prorogue the parliament, it being thought better to part with the parliament than with the declaration. Lord Shaftesbury, who had principally advised the calling of the parliament, spoke warmly against the motion for proroguing it. He told the king that he might judge, by the house of commons, what jealousies the increase of popery, and the apparent countenance which the papists received from the court, had raised in the nation; and if he should prorogue the parliament upon that point, he would expose himself so openly to censure that it might cause a great alteration in the minds of the people: and therefore it would be better to

Conduct of
the court
with regard
to the indul-
gence.

* Mr. Stringer.

A. D.
672-3.

Lord Clif-
ford's expe-
dient.

acquiesce with the request of the commons, than think of so dangerous a counsel.

This alarmed the king, and threw the junto into great confusion. On the other hand, they were resolved to maintain the declaration, for which Lord Clifford proposed an expedient; which was, that the king should ask the opinion of the house of lords, not doubting but that the peers would advise his majesty to support his declaration. He said it was presumptuous in the commons to arrogate to themselves a power of deciding matters of law, and much more to do it in prejudice to their sovereign: it ought, therefore, to be supposed, that their address proceeded from some misrepresentation of the king's judgment, as if, since the issuing of the declaration, he had changed his opinion about the legality of the proceeding; that if, in consideration of their vote, he should graciously condescend to have this branch of his prerogative tried in the supreme court of his realm, assisted by the judges, it was all they could reasonably expect; that this expedient, as it showed such great moderation, must produce a general satisfaction with his majesty's conduct; that it would put by the present thrust, and the king might keep himself on his guard against being

forced into a refusal of the commons' request, or a recalling of his declaration; and that it would give time to the supply to grow up and be perfected before the matter of prerogative could come to a final decision: by which means the king would either gain his point with the commons, or make a breach between the two houses, which might be a cover for his proroguing them.

A. D.
1672-3.

This advice was approved of. Lord Shaftesbury said nothing against it, foreseeing that the declaration would be opposed in the house of lords as well as in the house of commons, and particularly by the bishops, from their jealousy of the dissenters; and that the agreement of the houses in their sentiments might prevent a prorogation till some steps should be taken to secure the nation against popery.⁹⁵

Approved
of.

⁹⁵ It is difficult to conceive how, with Dalrymple's papers before them, the authors of this work could describe Shaftesbury's conduct thus favourably. It was Colbert's business to obtain correct information and to communicate it to his master, and he certainly wanted neither ability nor opportunities for the fulfilment of his task. On the 9th March 1673, he writes home to his court thus: "The chancellor, the treasurer, and the Dukes of Buckingham and Lauderdale, are of opinion to maintain this declaration of the king their master in favour of nonconformists; and that if the parliament persist in their remonstrances, as it is not doubted they will, to dissolve it and call another.

A. D.
1672-3.

The king's
application
to the house
of lords.

In pursuance of Lord Clifford's advice, the king desired the lords' opinion whether, considering the circumstances of his affairs and the good effects which his declaration for indulgence had produced, they did not think it reasonable that he should continue to support it? As soon as he had ended his speech, the bishops and their friends appeared warmly against the declaration.

Bishop
Burnet's
account
of Lord
Shaftes-
bury's con-
duct.

Bishop Burnet says, " Lord Clifford resolved to assert the declaration with all the force and all the arguments he could bring for it. He showed the heads he intended to speak on to the king, who approved of them, and suggested some other hints to him. He began the debate with rough words: he called the vote of the commons MONSTRUM HORRENDUM, INGENS; and ran on in a very high strain. He said all that could be said, with great heat and many indecent expressions. When he had done, the Earl of Shaftesbury, to the amazement of the whole house, said he must differ from the lord that spoke last TOTO CÆLO.

My Lord Arlington, who at present is single in his sentiments, says that the king his master ought not to do it." The declaration was afterwards given up upon the interposition of the French king, who of course supported his advice by a bribe. See Colbert's Letter to Louis, of 20th March 1673.—*Dalrymple*, p. 95.

He said, while those matters were debated out of doors, he might think, with others, that the supremacy, asserted as it was by law, did warrant the declaration; but now that such a house of commons, so loyal and affectionate to the king, were of another mind, he submitted his reason to theirs. They were the king's great council; they must both advise and support him: they had done it, and would do it still, if their laws and religion were once secure to them. The king was all in a fury to be thus forsaken by his chancellor; and told Lord Clifford how well he was pleased with his speech, and how highly he was offended with the other. The debate went on, and upon a division the court had the majority; but against that vote about thirty of the most considerable of the house protested: * so the court saw they had gained nothing in carrying a vote that drew after it such a protestation."

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1672-3.

Rapin takes no notice of this story of the bishop's; but, on the contrary, quotes Father Orleans, who says "that Lord Shaftesbury executed his resolution of quitting the king's party

Rapin's account of the same, from Father Orleans,

* If Bishop Burnet had consulted the journals of the house, (of which he was a member twenty-six years,) he would

have found there was no protest, nor even a dissent on the occasion.

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1672-3.

the day after the king resolved to revoke his declaration for liberty of conscience. It was eleven at night before the king had taken his last resolution; and the next morning the Earl of Shaftesbury appeared in the house of lords, at the head of the most violent party, against the catholic religion, the Dutch war, and the union with France."

and from
Echard.

Rapin afterwards gives another account of Lord Shaftesbury's acting in opposition to the court: "The Lord Treasurer Clifford, ignorant of Shaftesbury's intentions, paid him a visit the night before; and communicating to him a project for establishing a perpetual fund, to free the king from his dependence on the parliament, read to him a speech he had prepared to speak on the morrow, concerning this project, in the house of lords. The Earl of Shaftesbury seemed highly pleased with the speech, and desired to hear it again. The next day, the king and Duke of York coming to the house to countenance the project with their presence, the Lord Clifford spoke his speech. He had no sooner done than the Earl of Shaftesbury stood up, and answered his speech from the beginning to the end. He demonstrated the project to be ex-

travagant and impracticable ; that it would overturn the government, and perhaps send the king and the royal family abroad again, to spend their days in exile, without hopes of a return. If the treasurer's speech surprised the lords, who perceived the design of it, their astonishment was increased when they saw the chancellor, a leading member of the Cabal, declare so openly against the king. It is said, the Duke of York, whilst Shaftesbury was speaking, whispered the king, 'What a rogue you have for a lord chancellor!' and that the king replied, 'What a fool have you for a lord treasurer!'"

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1672-3.

Rapin copies this account from Echard, and says, after it, "I know not whether the truth of these particulars is to be relied on, some of which are improbable." The whole story, indeed, is improbable in the highest degree; for no scheme to raise money could be brought first into the house of lords: nor is there, in the journals of this house, any proceeding mentioned, which can throw the least light upon Lord Clifford's project or the nature of it.

The contradictions in these authors must be obvious to every reader, as they vary both with regard to time and to facts. Bishop Burnet says

Observations on these accounts.

A. D.
1672-3.

that Lord Shaftesbury's first declaring against the court was before the king resolved to cancel his declaration, and that it was occasioned by this very subject. Father Orleans asserts that it was afterwards. Rapin, from Echard, gives the account just related; and which, if it be true, renders it evident that Lord Shaftesbury was not in the secret designs of the Cabal, as has commonly been represented.

This project of Lord Clifford's was of the greatest importance: it was to make the king absolutely independent of the parliament. It had been concerted between the king, the Duke of York, and Lord Clifford, and was communicated to Lord Shaftesbury but the very night before the execution of it; at a time when they could not, with decency, have kept it secret from any officer of his majesty's in the house of lords, nor, with prudence, from any other lord by whom they expected it to be supported: the scheme was of the same extravagant nature with the shutting up of the exchequer, and appears to have been a child of the same father. If Lord Shaftesbury, therefore, opposed it in the house in the manner which is related, it must be al-

lowed that he spoke like a wise man, an honest Englishman, and a faithful minister.

A. D.
1672-3.

On the 3rd of March 1672-3, the lords, after a long debate upon the declaration, upon the address of the house of commons against it, and his majesty's answer, resolved to give advice to the king. On the next day, after another long debate upon the advice, they resolved, that the king's answer to the house of commons, in referring the points controverted to a parliamentary way by bill, was good and gracious, that being a proper and natural course for satisfaction therein. On the day following, they appointed a committee to prepare heads for a bill of advice in pursuance of the said vote, of which committee Lord Shaftesbury was one. The king therefore, to prevent any steps being taken by the lords which might be dissatisfactory to him, being disappointed in his expectation of their supporting him, finding the commons absolutely determined against the declaration, and being at the same time pressed by Lord Shaftesbury to cancel it and satisfy his parliament, (as Bishop Burnet allows,) called for the declaration on the 7th of March, and with his own hand broke the seal.

Proceed-
ings of the
lords con-
cerning the
declaration.

The decla-
ration can-
celled.

A. D.
1672-3.

The next day, Lord Shaftesbury told the lords that he had a particular affair to acquaint them with; which, though it was by his majesty's leave, was not by his command. However, he thought it his duty to acquaint the house, that his majesty had the last night caused the original declaration under his great seal to be cancelled in his presence; whereof he himself and several other lords of the council were witnesses.

Test act
brought in-
to the house
of com-
mons.

Lord Shaftesbury, having secured the sitting of the parliament, had an opportunity of showing his affection and zeal for the protestant cause. To weaken the interest and defeat the counsels of the adversaries to it, a bill was brought into the house of commons by his advice, and promoted by his friends, "for preventing dangers which might happen from popish recusants;"* by which every person in any office, civil or military, was obliged to receive the sacrament of the Lord's Supper in the manner of the Church of England, and to subscribe a declaration against the belief of transubstantiation. Whoever refused or neglected this was rendered incapable

* Echard says, "This bill strike directly at the Duke of York and his friends."—*Echard*, tom. iii. p. 321.
was particularly promoted, if not invented, by the Earl of Shaftesbury, who resolved to

of holding any office or employment; and, besides other penalties, adjudged to pay a fine of five hundred pounds.

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1672-3.

Though the bill passed with ease through the house of commons, it met with great opposition in the house of lords from the Dukes of York, Buckingham, and Lauderdale, Lord Arlington and Lord Clifford, who exerted their whole strength and interest against it. Lord Shaftesbury* was so strenuous for it, and spoke with such force, that he convinced the majority of the house of its being necessary for the security of the protestant religion. The bishops and their friends, who had appeared so vigorous for cancelling the declaration, could not refuse their compliance with this bill, which did the papists no other harm than removing them from places of power and trust in the nation; so that it passed into a law, and had the effect which Lord Shaftesbury designed; the Duke of York being removed from the privy council, and obliged to

Opposed in
the house of
lords.

Supported
by Lord
Shaftes-
bury.

Passed.

* "Upon this occasion it was, that the Earl of Shaftesbury, though then Lord Chancellor of England, yet engaged so far in defence of that act and of the protestant religion, that in due time it cost him

his place, and was the first moving cause of all those misadventures and obloquy which he since lies under."—*Andrew Marvel's account of the growth of Popery.*

A. D.
1672-3.

resign all his places. Lord Clifford lost his white staff;* many of the papists their civil employments, and several officers their commissions; in consequence of which that party was much weakened and discouraged.

The test act was, not only at that time but afterwards, looked upon as one of the strongest bulwarks against popery, and as the peculiar object of the dislike and jealousy of the papists. This was evident when the Duke of York came to the crown: for he endeavoured very early to get it repealed; and, upon the parliament's refusing to do so, he dissolved the house, and assumed to himself a power of dispensing with the act; a circumstance which contributed in no small degree to the revolution.

Other bills
brought in.

For a farther security against popery, a bill was brought in to educate the children of the royal family in the protestant religion: another

* Bishop Burnet attributes Lord Clifford's removal to the speech which he had made in the house of lords for the declaration, by which the commons were so much incensed, that the king told the duke, Lord Clifford could serve him no longer. It is certain, how-

ever, that he was removed by the test; for he continued in the treasury two months after the sessions in which the act was passed, and did not resign his staff till the 19th of June 1673, on which day Sir Thomas Osborne succeeded him.

was prepared to prevent intermarriages between protestants and papists; and a third to grant indulgence to protestant dissenters: but before these could be perfected, the king, on the 29th of March, sent a writing under his hand that the house should be adjourned to the 20th of October; and thus this memorable session ended.

A. D.
1672-3.

A. D. 1673.

The house
adjourned.

Lord Shaftesbury showed, not only by his own conduct, but by the advice he gave to others, that he kept the welfare of his country always in his view. He thought that a king's interest ought never to be considered in a distinct and separate light from that of his people; and that the best service which could be performed for an English monarch by his ministers, was the securing the properties and strengthening the liberties of his subjects.

Lord
Shaftes-
bury's ad-
vice to Sir
Thomas
Osborne.

This appeared in his speeches to Sir Thomas Osborne⁹⁶ and Serjeant Thurland at their taking the oaths before him in the court of chancery: the first upon receiving the staff of lord treasurer, in the room of Lord Clifford; and the other upon being made a baron of the exchequer.

In his speech to the lord treasurer was the fol-

⁹⁶ Now created Earl of Danby, and afterwards Duke of Leeds.

A.D. 1673. following remarkable passage: "Kings are as Gods, and bestow honour, riches, and power where they please; but in this they are as men, that they can only choose, not make a person adequate to their employment: for if their choice be merely favour, not fitness, their omnipotency is quickly seen through. There is no more to be asked of you in this condition but that you know your own interest, and that will secure you to the king's and the nation's. I repeat them thus together, because *none but mountebanks in state matters can think of them asunder*. And let me say to your lordship that, however happy you have been in arriving to this high station, yet *parta tueri non minor est virtus*. Many great men have proved unfortunate in not observing that the address and means to attain great things are oftentimes very different from those that are necessary to maintain and establish a sure and long possession of them." The new treasurer thanked the lord chancellor in public; but the next day, when he had considered the turn of the speech, he sent to revoke his thanks, and from this time conceived a strong resentment against him, which broke out afterwards upon many occasions.

In Lord Shaftesbury's speech to Baron Thur-

land, the following expressions contained a lively proof of the tender regard which he had for the ease of the people, as well as of his zeal for the interest of the king. “Let me recommend to you so to manage the king’s justice, and the revenues, as the king may have most profit and the subjects least vexation. Raking for old debts, the number of informations, projects upon concealments, I could not find, in the eleven years’ experience I have had in this court, ever to advantage the crown; but such proceedings have, for the most part, delivered up the king’s good subjects into the hands of the worst of men.”

A.D. 1673.

and to Serjeant Thurland.

The spirit that had been worked up in parliament by Lord Shaftesbury, alarmed the junto; and the army, which was encamped at Blackheath, was no less dreaded by the people. The papists were so incensed, so numerous, and so strongly supported, that daily insults were apprehended from them; and Lord Shaftesbury, knowing how obnoxious he was to them, in consequence of the frequent interruptions he had given to the advancement of their cause, kept his family well armed, and a constant guard in it all the summer. By his address he fomented a breach

The papists incensed.

A.D. 1673.

Lord
Shaftesbury
foments a
breach be-
tween the
jesuit and
jansenist
parties.

between the parties of jesuits and the jansenists, which, for a time, disconcerted all their measures. The former asserted the absolute supremacy of the pope, and were for an immediate change of religion by the most violent methods. The jansenists, who were apprehensive of the growing power of the jesuits, were for proceeding in a slower way, and for introducing popery by a gradual reconciliation of the church of England with the church of Rome.

Of the first of these parties, were the Duke of York, Lord Clifford, Earl of Norwich, (afterwards Duke of Norfolk,) Lord Arundel of Wardour, Lord Stafford, and others. Of the latter, were the Earl of Berkshire, Lord Carlingford, Lord Petre, and Lord Viscount Mountacute, who were assisted by Lord Arlington.

The jansenists had frequent consultations, in which Sir Ellis Leighton acted as secretary, and drew up their results; which were afterwards communicated to those of their party who did not appear amongst them. Mr. Bennet, a friend of Lord Shaftesbury, by means of a mistress of Sir Ellis, got copies of the papers, and delivered them, from time to time, to Lord Shaftesbury; who, by this means, was enabled to work up the

breach between the jesuits and the jansenists, and A.D. 1673.
to conduct things in such a manner as to procure
these last to declare against the violent proceed-
ing of the others.

Lord Shaftesbury, upon all occasions, exposed the conduct of the popish junto to the king; and sometimes made him so sensible of the dangerous consequences of their transactions, that Charles gave them marks of his dissatisfaction, and, at such times, would swear to abide by his chancellor's advice, and never quit him or forsake the protestant cause. But Lord Shaftesbury, being so much engaged in the court of chancery that he could not often be in private with his majesty, and having many powerful enemies at court, who had more frequent opportunities of insinuating their advice, the king gave too many proofs of the unsteadiness of his temper. He quite forgot his promises to Lord Shaftesbury, in his absence; and as often renewed them in private conversation. However, though Lord Shaftesbury's endeavours to draw the king off from the junto were unsuccessful, he prevented his taking any violent measures; and, with great difficulty, secured the nation, till the meeting of the parliament in October, from the dangers which were

His free advice to the King.

A.D. 1673. threatened by the Blackheath army and the counsels of the popish faction.

Match recommended to the Duke of York.

About this time, the treaty of marriage between the Duke of York and the Archduchess of Inspruck was broken off; for, the empress dying, the emperor married the archduchess himself. The court of France, to secure the duke, if possible, still more in its interest, recommended to him a match with Mary d'Esté, Princess of Modena. She was young and beautiful, of a house entirely attached to the French, and a relation of the pope. To engage her friendship still more, the French king agreed to pay her portion, and to adopt her for a daughter of France.

Opposed by Lord Shaftesbury.

Lord Shaftesbury, foreseeing that this match would engage our court still farther in the interest of France, represented to the king the ill consequences of the marriage, and how greatly it would disquiet the minds of the people, too much inflamed already by their apprehensions of popery. But all his arguments were ineffectual, and only incensed the Duke of York and the French party, the more against him.

Meeting of parliament.

As the parliament had only been adjourned, Lord Shaftesbury advised his friends among the commons to complete and despatch, at their

meeting on the 20th of October, the bills then depending in the house; particularly, the bill for preventing intermarriages between the protestants and papists, and that for the ease of protestant dissenters. A.D. 1673.

To obstruct the finishing of these bills, the king was prevailed on to prorogue the parliament, on the 20th of October, to the 27th; because, upon a prorogation, all business depending in either house, except judicial proceedings, must begin again. As, by this prorogation, the first of these bills could not be finished soon enough to obstruct the marriage, Lord Shaftesbury, still earnest for its prevention, desired the leading members of the commons, who took their measures from him, to present an address to the king against the match. Prorogued for seven days.

In order to animate the parliament to some public step, when it met on the 27th of October, Lord Shaftesbury, after he had delivered the speech appointed by the king, concluded in the following remarkable manner: Conclusion of Lord Shaftesbury's speech to parliament, Oct. 27th.

“ My Lords and Gentlemen,

“ I have no more in command; and, therefore, I shall conclude with my own hearty prayers that

A.D. 1673. this sessions may equal, may exceed, the honour of the last; that it may perfect what the last began, for the safety of the king and kingdom; that it may be for ever famous for having established, upon a durable foundation, our religion, laws, and properties: that we may not be tossed with boisterous winds, or overtaken by a sudden dead calm; but that a gentle fair gale may carry you in a steady, even, and resolved way into the ports of wisdom and security."

Proceed-
ings of the
commons.

This public sanction to the vigorous proceedings of the last session, and this honest advice to pursue the same, coming from such a quarter, had a proper effect upon the parliament. On the 31st of October, the commons (as Lord Shaftesbury had privately advised some of the principal members) presented an address to the king against the marriage of the Duke of York with the Princess of Modena. They bound themselves by a vote not to take into debate the consideration of any further aid or supply, or charge upon the subject, (unless the obstinacy of the Dutch should make it necessary,) before the kingdom was effectually secured from popery and popish counsel-

lors. They also voted “ a standing army to be a A.D. 1673. grievance and a burthen to the nation.”

Whilst they were pursuing these vigorous measures, a bill was brought into the house of lords for encouraging the manufactures of England ; but the houses had not time to make any further progress in the public service.

The popish junto at court were exasperated at Lord Shaftesbury for presuming to give his own advice to the parliament, in the presence, and, in a manner, under the countenance of the king. In this he certainly exceeded his commission ; for he could not, in strictness, add anything of his own after what he had delivered by command. They saw how great his influence was on the parliament ; and thought that, whilst there was a chancellor who leaned so strongly to the popular side, some resolutions fatal to the cause of popery might be taken. They were apprehensive of the interest he had by being in so high a station, and feared his influence over the variable temper of the king. They perceived, likewise, that whilst he continued in council, he had the means of penetrating their designs, by which he generally prevented them ; but, thinking it unsafe to re-

Popish junto exasperated at Lord Shaftesbury.

A.D. 1673. move and irritate him in the present disposition of the house of commons, and during its sitting, they resolved, as a preparatory step to his disgrace, to engage the king to dissolve the parliament.

They endeavour to persuade the king to dissolve the parliament.

On the 3rd of November, the king being at supper at the Duchess of Portsmouth's, the French ambassador, the Portuguese minister, Lord Treasurer Danby, Lord Arundel of Wardour, the pope's nuncio, and some others, were likewise there. After the king had drunk freely, the company turned the discourse on the conduct of the house of commons, and on the opposition it had lately made to the court in relation to the duke's marriage, the declaration, and the test act. Their conduct with regard to these measures was strongly commented upon and greatly magnified: they advised, therefore, that Charles should either render himself more independent of his parliament, or part with it.

To induce him to this, the French ambassador assured him of supplies of money and men from France; and produced letters giving an account of his master's success in Flanders, to show that Louis was in a condition to make good the articles of the treaty of Dover, by which he had en-

gaged to furnish Charles with a large body of troops. It was also represented to him how much he might depend on the army in England, and on that of Scotland, where the Duke of Lauderdale presided. A.D. 1673.

Charles's great weakness was a want of steadiness and too ready a compliance with every proposal. Accordingly, in the humour he was worked up to by drinking, and by the discourse of the company, such an impression was made upon him, that he promised to dissolve the parliament the next day. However, upon cooler reflections in the morning, he changed his mind, and instead of a dissolution resolved upon a prorogation. The king determines to prorogue it.

Having formed his resolution, he sent for Lord Shaftesbury, who was just going to Westminster Hall, and taking him into his closet, after some immaterial conversation, asked if he had brought his robes. Lord Shaftesbury was much surprised at the question; upon which the king assured him that though, for some reasons, he had agreed to prorogue the parliament that morning, he would never forsake either him or the protestant interest, but would be steady to what he had always promised.

Lord Shaftesbury immediately answered, " Sir,

A.D. 1673.

Lord
Shaftes-
bury's ad-
dress to the
king.

they who have prevailed with you to prorogue the parliament, will not stop here. I fear your compliance with this may prove of dangerous consequence to yourself and the nation. In case you had to deal only with fools, the people would bear a great deal before they would turn upon you; but they are such busy fools, that they will quickly bring you into destruction. If my advice might have prevailed, I would have engaged my life and fortune to have made you the most beloved and powerful prince in Christendom: but, sir, though I must ever hold myself obliged to you, and shall run any risk in my power to save you, yet I see you have taken such measures, and are gone over to a party so contrary to the interest I have been always contending for, that I am not able to serve you; and am satisfied your next step must be to send for the seals from me. But, sir, you may fancy what you please of the Romish religion, I shall leave this as a maxim with you: if you eat sage and butter in the morning, and govern well, it will make you more healthy and happy here, and bring you to heaven much sooner, than popery or the exorcisms of its priests."

When Lord Shaftesbury came out of the closet,

he sent a servant for his robes; and, in his way A.D. 1673. to Westminster, told Mr. Stringer what had passed between the king and him, and that he thought the nation very near its ruin. On that day, November the 4th, the king prorogued the parliament to the 7th of January following.

The parliament prorogued.

Three days after the prorogation, Lord Shaftesbury went to the council, in expectation of the sheriffs being pricked for the ensuing year: but, as it was determined that the seals should be taken from him, it was not thought proper by the court that he should have any share in naming the sheriffs; and therefore, the king coming late to the council, this business was postponed till another day.

Seals intended to be taken from Lord Shaftesbury.

When the king left the council chamber, Lord Shaftesbury followed, and spoke to him with such freedom of the bad state of affairs, by the prorogation of parliament, the continuance of the Dutch war, and the troubles which must attend an adherence to popish counsels and the French interest, that the king seemed to be much affected. This was, however, of short duration; for on Sunday morning, the 9th of November, when Lord Shaftesbury went to court, he judged from several circumstances that the seals were then to

A.D. 1673. be taken from him. He presently attended the king in his closet, while the attorney-general and others were in expectation of his returning without the purse. Being alone with the king, he said, "Sir, I know you intend to give the seals to the attorney-general; but I am sure your majesty never designed to dismiss me with contempt." The king replied, "God's fish, my lord, I will not do it with any circumstance that may look like an affront." "Then," said he "your majesty will permit me to carry the seals before you to chapel, and send for them afterwards from my own house?" The king, who had still a regard for him, and probably was not displeased with the humour of his design, readily complied, and told him he would send for the seals at four o'clock in the afternoon.

Lord Shaftesbury entertained his majesty in conversation, purposely to amuse the courtiers and the attorney-general, who, he believed, was in the greatest anxiety for fear the king should be prevailed on to change his mind. The king and the chancellor came out of the closet smiling and talking together, as they went to the chapel; which was so contrary to the expecta-

tion of those who were present, that some went A.D. 1673.
immediately and told the Duke of York* that
all their measures were broken.

After sermon, Lord Shaftesbury carried the
seals home with him, and, at the time appointed,
Mr. Secretary Coventry went with a warrant
for them, and said, "My lord, you are out of
danger and at ease, but we are in a way to be
ruined. I desired to be excused from this office;
but, being your relation and friend, they put
it as an affront upon me." Lord Shaftesbury He gives up
the seals.
delivered the seals with great cheerfulness, say-
ing, that whilst he had them, he had given the
king what he thought the most seasonable and
just advice for his welfare and the good of
the public: then, with a pleasant air, he added,
"It is only laying down my gown, and putting
on my sword;" which he immediately ordered to
be brought.

The removal of Lord Shaftesbury was of no
advantage to the court. As the reasons of it
were soon known, it was freely arraigned and
condemned by the public, and contributed much
to his reputation and interest.

* Echard, who likewise tells the Duke of York and the
this story, allows that he was popish faction.
turned out by the interest of

A.D. 1673.

Regard
paid to him
by Prince
Rupert and
others.

The same day, as we are informed by Dr. Kennet,* he was visited by Prince Rupert and most of the peers and persons of quality about town, who acknowledged that the nation had been obliged to him for the just discharge of the trust that had been reposed in him, and returned him their thanks.

Prince Rupert was a steady friend to the protestant and English interest; and, as he had been one of the council from the time of the Restoration, he must have been well acquainted with Lord Shaftesbury's conduct as a minister of state. This compliment, therefore, from him, and from other persons of distinction, shows that Lord Shaftesbury had, both in council and in parliament, opposed the arbitrary views of the court. This, too, is confirmed by the prosecutions which according to Kennet, the papists set on foot against him; in which Colonel Conquest was their principal agent. All the offices wherein he had been concerned were narrowly inspected; but when the king's council had examined the several articles industriously collected for a charge against him, they declared them insufficient.

Vain attempt to form a charge against him.

The king's council could not be so much at-

* Kennet, vol. iii. p. 324.

tached to Lord Shaftesbury as to the court: this A.D. 1673. declaration, therefore, with the strict inquisition made into his conduct by his enemies, who were not deficient either in power or animosity to carry it on, is an ample proof of his integrity in places of the highest trust in the nation; in one of which he had been above eleven years. It is, likewise, an evidence that the popish junto were greatly inflamed against him. They knew how much he had obstructed their designs in private, and they dreaded his abilities now that they had driven him into an open opposition.

As he was not made lord chancellor till the 17th of November 1672, and as, in so short an interval as between this time and the 4th of February following, when the parliament met, Lord Clifford and the other ministers (as Bishop Burnet acknowledges) had engaged their friends in the house of commons to attack him, on the very meeting of the parliament, for issuing the writs during the prorogation, it is probable that there was no union between him and the rest of the ministry before he was chancellor; that he was advanced to this post with a design to ruin him, or because they could not prevail on the king to part with him; and that the speech

Designs of
his ene-
mies.

A.D. 1673. against the Dutch was calculated to expose him to the resentment of the nation.

This last opinion is strengthened by the circumstance that, after he had delivered the speech, the king spoke a second time, which never happened before, and mentioned the issuing of the writs, desiring the commons not to enter upon any other business till they had examined that particular. This seemed to be the result of a settled design, first to make the chancellor unpopular by the speech, and then to put the king upon recommending to the house to begin with the examination of that affair, upon which the ministry had resolved to engage their friends to impeach him. That the king should forget it in his speech, before the lord chancellor spoke, was very extraordinary: for the commons had, the day before, even previous to the choice of their speaker, complained of the writs; and it cannot be supposed that the king's first speech was an extempore one.

His behaviour as lord chancellor.

As Lord Shaftesbury, when he was dismissed from his employment, received a public and uncommon testimony of regard from Prince Rupert and the other protestant lords for his conduct in the ministerial part of his office, so his

behaviour in the judicial part was attended with A.D. 1673. general applause. From the time when he received the seals, he applied himself with great zeal and assiduity to an honourable discharge of his high employment; not only by giving ease to the suitors by a patient hearing and quick determination of their causes, and preventing, to the utmost of his power, any unnecessary delays, but also by making the course of proceedings as open and as little burthensome as possible.

Though he had not the possession of the seals above a year, he took great pains to reform the court. This, however, he did not do in a hasty superficial manner, and with an absolute confidence in his own judgment; but when he had drawn up such regulations as he thought proper, he gave copies to the most eminent counsellors,* and desired their opinions in writing upon every part of them. When he had compared and digested these opinions, he formed his regulations,†

* There is, among his papers, a collection of opinions of the attorney and solicitor general, Serjeant Maynard, Mr. Peck, and others, endorsed by Mr. Locke, upon

the regulations made by Lord Shaftesbury in the register office, which abounded, at that time, with abuses vexatious to the suitors.

† A book of them is still re-

A.D. 1673. which are very explicit, and extend to every branch of the court.⁹⁷

He found the records in a very bad condition; many of them having been defaced, misplaced, or embezzled. In a letter to Sir Harbottle Grimstone,* Master of the Rolls, he represented the ill consequence of this state of the records, and desired that, where the originals were damaged, authentic copies might be engrossed and filed, and that, for the future, better care might be taken to preserve them.

Review of
his political
conduct.

Lord Shaftesbury having been represented as a restless and ambitious man, it may not be im-

maining, with the following title, "A collection of the orders heretofore used in chancery, with such alterations and additions thereunto as the Right Honourable Anthony Earl of Shaftesbury, Lord High Chancellor of England, by and with the advice of Sir Harbottle Grimstone, bart., Master of the Rolls, hath thought fit to ordain and publish for reforming of several abuses in the said court, preventing multiplicity of suits, motions, and unne-

cessary charge to the suitors, and for their more expeditious and certain course of relief."

* Sir Harbottle wrote him an answer, in which he acknowledged that Lord Shaftesbury justly called it a shameful complaint; said, that his predecessors had been very negligent therein; justified his own conduct by some steps which he had taken; and assured him he would, for the future, keep them in better order.

⁹⁷ See page 16.

proper to review his conduct from his first en- A.D. 1673.
gagement in public affairs till his dismissal from
them.

When he went to King Charles the First at Oxford, the scheme which he proposed was a neutral one, intended for composing the national dissensions. When, for his own safety, he was forced into the parliament's quarters, he accepted of a command only in his native county, which had been harassed by the king's troops; and when he had conquered and driven out these troops, he laid down his commission, and never held any lucrative employment either under the parliament or under Cromwell, whom he openly opposed.

For his important services in bringing about the Restoration, he was the first person admitted into the privy council; and the king voluntarily conferred on him the office of chancellor of the exchequer and under-treasurer.

He came into employment without the interest of others, and he always stood upon an independent footing; and although he was allowed, even by his enemies, to have a genius superior to all the ministers, he continued in the same post above eleven years without any advancement.

A.D. 1673. No instance has been produced, no accusation brought against him, that he endeavoured to raise himself higher, or that he formed any intrigue for that purpose.

During the short time that he possessed the seals, he was constantly employed in an honourable discharge of his trust, and in promoting, by his authority and interest, the welfare of the public; and, at length, he resigned his power with a content and an alacrity altogether inconsistent with the ambition ascribed to him.

CHAPTER III.

Lord Shaftesbury rejects an offer of a bribe from the French King.—Has a private audience with the King.—Enters into open opposition.—Measures of the Opposition.—Habeas Corpus Bill passed by the Commons.—Lord Shaftesbury retires into Dorsetshire.—His Letter to the Earl of Carlisle.—His influence in both houses.—Debates in the Lords.—Corruption of the Parliament.—Destructive Bill in the House of Lords—Opposed by Shaftesbury.

IMMEDIATELY after the removal of the Earl of Shaftesbury from the office of lord chancellor, intelligence was received of great disorders in Scotland. The Duke of Lauderdale's government in that country was so arbitrary and oppressive, and discovered so openly the designs of the court, that a general spirit of disgust and opposition was raised and spread among the people. The king therefore found himself deceived in his expectation of rendering the Scotch army subservient to his schemes of power.

About the same time, Bonne was taken by the Prince of Orange. This disconcerted the measures of the French monarch so much, that King

A.D. 1673.

Disorders
in Scotland.Bonne
taken.

A.D. 1673. Charles had reason to believe he should not be supplied with the fifty thousand men who were engaged to be sent him when required.⁹⁸ These circumstances, together with the discontents which the king found were spreading amongst the people of England, and the spirit which he saw was rising in the parliament, filled him with no small degree of uneasiness.

The king's
complaint
to the Earl
of Oxford.

Under this anxiety, the king opened his mind to the Earl of Oxford, complaining how ill the junto had used him: that they drove him on with such violence that he was very much in doubt what might be the consequence; that he had had but one man about him on whose fidelity and wisdom he could rely, and they would never

⁹⁸ Charles had now abandoned his design of declaring himself a catholic, and was less inclined to venture upon the experiment of these foreign succours. In March of this year Colbert writes, "I did not think it was for your majesty's service to follow the measures you prescribed to me with regard to the offer of the troops with which you were willing to assist the king for the execution of his designs after the peace; for he is persuaded, as well as his ministers, that nothing is so capable of causing a general revolt in the nation as to show them that he can support his authority by foreign forces." Colbert promised any force that Charles might stand in need of; but assures his master that he has reason to believe that no very chargeable demand will be made on that head.—*Dalrymple*, p. 96.

let him be at rest till that man was dismissed ; A.D. 1673.
 that he had since found himself encompassed with
 so many difficulties that he must be obliged to
 recall Lord Shaftesbury, who was the most able
 to extricate him from them, and from whom he
 always heard his danger without reserve.

Some time after, Monsieur Ruvigny, the mi-
 nister from France, waited on Lord Shaftesbury.⁹⁹ Ruvigny's
application
to Lord
Shaftes-
bury.
 He first made him many compliments in the
 name of the French king, as well as King
 Charles, on his abilities as a statesman, his ad-
 dress in the most difficult affairs, his reputation
 with the people, and his fidelity in all public
 trusts ; after which, to convince him of the high
 esteem which the King of France in particular
 had for him, he desired his acceptance of ten
 thousand guineas as a present from that monarch,
 and importuned him to send for them in the
 afternoon. He told him farther, that King
 Charles not only approved of his offer, but was
 desirous he should accede to it ; and had besides

⁹⁹ Ruvigny was sent over in the autumn of this year to dis-
 suade Charles from his design of making peace with the Dutch.
 He offered an advance of the subsidy not yet due. Charles,
 however, pleaded the state of his affairs at home ; and it was
 probably upon this, that the French minister applied himself to
 the leaders of the popular party.

A.D. 1673. authorized him to say, that if he would return again to court, he might choose what preferment he pleased; and that, if he did not approve of the seals, he should have the white staff, and be raised to the dignity of a duke.

Lord
Shaftes-
bury's an-
swer.

Lord Shaftesbury answered, that he did not doubt, from these extraordinary offers, but it was expected he should adhere to the French interest, which he could never do whilst it was so incompatible with the interest of his country: that he was obliged to the French king for his favourable opinion, but could not by any means accept of the present designed for him; and even in case he should do it, he could perform no service in return, since no Englishman would follow him into an interest so evidently destructive to Great Britain; especially as the French king had lately given such umbrage by the increase of his shipping, and by his endeavours to obtain the sovereignty of the sea: that, if he had acquired any reputation with the people, it was because they believed he adhered to their rights and religion, and fell a sacrifice upon that account; and that as soon as they should find he had quitted them, they would leave him as speedily.* He desired

* Mr. Stringer, in his manuscript, says, that he was at Lord Shaftesbury's when Monsieur Ruvigny came thither,

Monsieur Ruvigny to represent him as full of A.D. 1673. duty to King Charles, and to assure him that he had still the same heart and disposition to serve him, if he could do it consistently with the interest of the protestant religion and the liberties of the people.

This conduct of Lord Shaftesbury in refusing a present, which he was solicited even by his own master himself to take, is illustrated by the following story, which is told by the Earl of Essex in a letter from Ireland. It relates to a chancellor of the Emperor Charles the Fifth, and may not be improperly introduced in this place, as the same arts were used with regard to Lord Shaftesbury, and with no greater success.

“The emperor had a person of extraordinary A story. worth for his chancellor, who, having refused to pass an unreasonable grant, some of the courtiers took their opportunity, when the emperor was

and when he went out: that Ruvigny was in private with his lordship near two hours, with only one gentleman, who was the interpreter between them; for, though Lord Shaftesbury understood French, he was not ready in speaking it: that, immediately after Monsieur Ruvigny was gone, he	had an account of this conversation, with much more to the same purpose, from Lord Shaftesbury, and from the gentleman who was interpreter. Some time after, Monsieur Ruvigny related to Lord Russell (who was his relation) his discourse with Lord Shaftesbury.
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A.D. 1673. pleasant and in good humour among some of his merry companions, to prevail with him to send a positive command to his chancellor for passing the grant, which still the chancellor refused. These men of pleasure (the very pest and ruin of all courts wherein such insinuate themselves) failed not to exasperate the emperor against this minister; telling him he was affronted, and, if he suffered this, the chancellor was emperor, and not himself, with many other expressions of the like kind, as is usual upon such occasions; so that there was a second and third positive command, with promise of advantage, and, at last, with threats of losing his place in case he refused. But the chancellor, continuing firm in his resolution, still utterly denied putting the seal to the grant; whereupon these gentlemen thought they had now clearly gained their point, and rid themselves of this good minister, (whom they always found an obstructor of their exorbitant designs,) urging the emperor to make good his word, and send immediately for the seals: but this great prince replied, ‘Gentlemen, you are all mistaken; for this chancellor is an honest and true man, and so true to me that I myself cannot bribe him to be otherwise.’ ”

Lord Shaftesbury, not knowing in what light his interview with Monsieur Ruvigny might be represented, desired, by Mr. Chiffinch, a private audience of the king, who readily appointed him to be at eight o'clock that evening at Mr. Chiffinch's lodgings; where he gave his majesty an account of the whole conversation,* and was pressed by him, with more than ordinary warmth, to accept the offers. He told the king, in answer, that he could never undertake to support such measures as were, in his opinion, repugnant to the welfare of England and the protestant religion, and which could be formed only by French counsels. He once more endeavoured to convince him of the fatal tendency of these measures; and represented to him how much he would conciliate the affections of his subjects, and raise his reputation with foreign countries, by making a peace with the Dutch and joining the confederates, in order to check the dangerous and prevailing power of France. But the king was inflexible upon this point: Lord Shaftesbury, therefore, took his leave, saying that he should be always ready to serve him with zeal and fidelity when he could do it consistently with his sentiments.

A.D. 1673.

Lord
Shaftes-
bury has a
private au-
dience of
the king.

* Stringer.

A.D. 1673.

Reflec-
tions.

If Lord Shaftesbury's advice had prevailed, the repose of Europe might have been established. This was the crisis in which it could most effectually have been done; as the common danger had before united the States General, the Emperor, the King of Spain, the Elector of Brandenburg, and other princes, in a league against France, into which King Charles might have entered, without being at any other expense than the pay and subsistence of his own troops.

If in that case the French king had continued the war, England, in conjunction with Holland, would have had an opportunity of destroying his naval strength, which afterwards became so formidable and so fatal to our trade. France, however, could not at that time have supported herself under the weight which England would have added to the confederates. The French king must, therefore, have submitted to such terms as would have been offered him; in consequence of which his power would have been confined within proper limits, the protestant interest would have been strengthened, the liberties of Europe secured, and that deluge of blood prevented which has since flowed from almost every country as a sacrifice to the ambition of France.

Nothing is more difficult than the renewal of confederacies among princes when once they are dissolved by jealousy or self-interest. This has been dearly experienced by England, which ever since that crisis has been obliged to purchase allies, and bear the chief burthen of the wars with France; a burthen under which the nation now stoops, and under which it must for a long time labour.

A.D. 1673.

The king was attached to France by choice as well as by engagements; and the principles and inclinations of the Duke of York operated still more steadily and zealously in its favour. The Duchess of Portsmouth (the favourite mistress) had no other views than to her own interest, which was identified with that of France; and there were few or no counsellors about his majesty but such as were entirely under the influence of the duke, as indeed was the king himself.

As Lord Shaftesbury's capacity was extensive, so were the occasions on which it was employed. He considered nothing which related to the public to be beneath his knowledge and attention; and, keeping in view the trade of England as her principal strength and support, he thought that her colonies required her more immediate care, since, by being furnished from them with pro-

Lord Shaftesbury's attention to the colony of South Carolina.

A.D. 1673. ducts for her manufactories, she would retain more of her wealth at home, be more independent of other countries, and be able to trade with them to greater advantage. He was, therefore, particularly solicitous about settling and establishing a new colony, which has since proved a considerable and increasing fund of wealth to Great Britain.

In the year 1663, King Charles granted, by charter, a large tract of land on the southern continent of North America to the Duke of Albemarle, Lord Clarendon, Lord Shaftesbury, and five other persons of distinction, for the establishment of a colony which was to be named South Carolina. The rest of the proprietors, from their confidence in Lord Shaftesbury's abilities, left the sole management of the affair to him; and, with the assistance of Mr. Locke, he framed the constitution, and drew up a body of laws for the good government of the province.¹⁰⁰ He nominated the governor and all the officers; and the care of transporting the first settlers, many of whom he assisted out of his own private purse, devolved entirely upon him. He afterwards kept up a regular correspondence with them, and was

¹⁰⁰ These were afterwards published.

always ready to hear the complaints of the mean- A.D. 1673.
est among them.

In a book containing copies of the letters that he sent thither from time to time, which is still remaining, there appears a great care of the people, a zeal for their rights, an enmity to oppressors, (even when they were his own friends, and employed by him,) and a love for liberty in general, which was certainly his prevailing sentiment. The reader, perhaps, will not be displeased with one or two of his letters written upon this account; as the openness of his temper and the greatness of his spirit are evident in them.

“ SIR,

Exeter House, June 20, 1672.

“ By the last that came hither from Carolina, I find that you were not received there with such general satisfaction, nor so forwardly admitted to the government we intended you, as, perhaps, you imagined. I am sorry to find any differences at all among you. The causes thereof I shall not enter into; but shall advise you, as my friend, not to make use of the government we have put into your hands, to revenge yourself on any who have spoken their apprehensions with that freedom which must be allowed men in a country

Two Letters
written by
him con-
cerning
Carolina.

A.D. 1673. wherein they are not designed to be oppressed, and where they may expect equal justice and protection.

“ I have too great a value for your condition and ability, not to desire the continuance of a right understanding between us; and therefore I must take the liberty to deal freely with you in a matter wherein we are both concerned; and tell you plainly that I cannot avoid thinking that the suspicions of those men who have expressed a fear of your management of the government had some grounds. It is in your power to set all right: I know you have dexterity enough to do it: you are now upon foundations of a larger extent than are usual, and, perhaps, than in other places you have met with; and if you will but suit your government to them, and direct it wholly to the impartial prosperity of the whole plantation and the planters in it, you will remove the jealousies which, I must tell you, some of the plantation have conceived of you; you will oblige the lords proprietors, and reap all those advantages which are sure to attend him who is the greatest and most considerable man in a thriving plantation, and who hath contributed much to the advancement thereof.

“ For my own part, I assure you that, having A.D. 1673. set my mind on carrying on this plantation, and engaged my word that the people shall live safe there under the protection of a fair and equal government,—upon confidence whereof most of the planters have come thither,—I shall think myself extremely injured by any one who shall put such an affront upon me as to make those who trusted me be deceived ; and am resolved, at any rate, rigorously to require satisfaction of any one who, by any undue proceedings, shall discompose the quiet of this settlement. On the other side, I shall be as ready to acknowledge to any one whatever kindness they shall do, or assistance they shall give, to this plantation. I the more frankly make this declaration to you, Sir John, because you have already contributed much, and are like to do more, to the increase and growth of this place, where you have a considerable interest, which ought to make you have the same concernment for it that I have.¹⁰¹

“ I return you my thanks for the forward inclination you have shown to Carolina ; and tell

¹⁰¹ Shaftesbury's affection for this colony was afterwards yet more strongly shown. In 1681, when the earl was in custody, Sir Richard Bulstrode says, that he was assured upon good au-

A.D. 1673. you, moreover, that you have it in your hands, by endeavouring the public good of it, to make me your friend as much and as long as you please. I am, Sir,

“Your affectionate friend,

“SHAFTESBURY.”

“To Sir John.”

“Exeter House, Nov. 27, 1672.

“SIR,

“Yours, of the 30th of September last, I have received; and am glad to find that the tobacco of Carolina has so good a reputation amongst you. I was always confident, and am daily more and more confirmed, that it will prove the most flourishing plantation that ever was settled in America, if it be not overlaid or strangled in its infancy by those into whose hands we commit it.

“Though I am willing to believe all that you say of Sir John, and to have as good an opinion of him as may be, yet I must deal freely with you, and tell you, I cannot foresee what advantage we shall receive from all those able parts

thority that he petitioned the king for his liberty, offering to transport himself to Carolina. This petition met with no notice. *Bulstrode's Memoirs*, p. 332.

you mention, if he proceeds as he hath begun. A.D. 1673.
Since he came in, we hear of nothing but wants and supplies. We must build a house for the governor, and we must make provision for the entertainment of the council; so that, if to take care of one, whatever becomes of the people—if to convert all things to his present private profit, be the mark of able parts, Sir John is without doubt a very judicious man.

“Notwithstanding all this, my dissatisfaction in him ceases as soon as he ceases to discompose their affairs; but you must give me leave to profess to you, that unless these things be cured, and I find that care be taken of the plantation, I shall not have patience quietly to sit still and look on whilst the colony is destroyed: and should it fall by his perverse and indirect management, the indignation of having a design of so fair hopes and so great consequence, on which I had set my mind, ruined by his covetousness or ambition, will make me require satisfaction in the remotest part of the world; for in this, which is my darling, and wherein I am intrusted also by others, I cannot suffer myself and them to be injured by anybody without great resentment.

“I have writ thus plainly to you, because I

A.D. 1673. take you to be a friend to us both ; and I desire to be so to Sir John, as soon as, by an easy turn of himself, and his taking care of the public concernment there, he shall give me occasion.

“ I am,

“ Your very affectionate friend,

“ SHAFTESBURY.”

“ To Sir Peter Colleton,
at Barbadoes.”

Lord
Shaftesbury
openly op-
poses the
court mea-
sures.

As Lord Shaftesbury, whilst employed by the court, had used his utmost endeavours to free the king from the influence of French and popish counsels; had often obstructed the measures of the junto; had, by the test act, removed the Duke of York from his places and purged the offices of papists; as he had a perfect knowledge of the designs of the ministry and the tendency of them; so he now appeared, in a more open manner, the boldest and most strenuous assertor of the English and protestant cause. He had, with a wonderful address, raised a powerful opposition in the house of commons, where none of any consequence had shown itself before; in a house of commons so devoted to the king that it thought it could not give him too much, or carry his prerogative too

high; a house of commons which had taken some A.D. 1673. steps in corruption, and was sinking deeper into it; and this opposition he ever afterwards, with as surprising a steadiness, supported. He continued the head and spirit of it till the time of his death.

This character neither his knowledge, his sagacity, his eloquence, his application, his steadiness, nor all conjoined, could have qualified him for without a known and consummate integrity. Mankind are not long to be deluded with specious appearances; and he that will be followed for a length of time, must convince them that he can be trusted.

Some writers have confidently asserted, that this opposition, though right in itself, was, in Lord Shaftesbury, founded upon wrong principles, and chiefly on his revenge for being out of place; that his enmity to arbitrary power was only a pretence, and his zeal for the protestant religion no more than an engine of popularity. Such general assertions are easily made, but they merit no regard unless supported by proof. If Lord Shaftesbury's opposition was owing to resentment, and this to his being out of power, the restoring him to power again would have re-

Vindication
of his con-
duct.

A.D. 1673. moved that resentment. King Charles and the Duke of York had great points in view, the conduct of which required the subtlety of the ablest politicians. The king knew the superiority of Lord Shaftesbury's parts, and his influence both with the parliament and the nation. If Lord Shaftesbury, therefore, had no restraint of principle, his ambition would naturally have led him into the interest of the court; and it was the interest of the court to gratify his ambition to its utmost extent.

A. D.
1673-4.
Meeting
and pro-
ceedings of
parliament.

The parliament met on the 7th of January 1673-4, and immediately took into consideration the several grievances of the public; the growth of popery, the great power of France, and the continuance of the Dutch war. The house of lords addressed the king to issue a proclamation requiring all papists and reputed papists to remove out of London and Westminster during the session of parliament. Both houses afterwards addressed the king for a general fast to implore the divine protection against the efforts of popery. The design of this was to give the alarm through the nation; and it had its effect, by opening the eyes of the people, and showing them that their religion was in danger.

The commons presented, likewise, an address to the king, that the militia of the city of London and county of Middlesex might be in readiness, at an hour's warning, to suppress any tumultuous insurrections which might be occasioned by papists or any other malcontented persons. They then began an attack upon some of the ministers. They unanimously voted that an address should be presented to the king "to remove the Duke of Lauderdale from all employments, and from his presence and counsels for ever; being a person obnoxious and dangerous to the government." They drew up articles of impeachment against Lord Arlington¹⁰² for his open protection, while secretary of state, of the Roman catholics; and for other advices and actions, as having been pernicious and illegal. They resolved to proceed in the same manner with the Duke of Buckingham, who, desiring to be heard

A. D.
1673-4.

¹⁰² It is a remarkable instance of that generous feeling which was before shown in the case of Mr. Denzil Holles, that, although Shaftesbury was now in possession of the secret of the first treaty with France, and although Arlington had been active in procuring his disgrace, he now made no use of this important discovery. Had Shaftesbury discovered this treaty to the commons, nothing could have saved Arlington from the scaffold.

A. D.
1673-4.

at their bar, answered those queries which, as is before related, were put to him by the speaker, in which he endeavoured to justify his own conduct in some particulars, under the sanction of Lord Shaftesbury's.¹⁰³

They then proceeded to prepare several bills for the security of the government and the suppression of popery. They advised the king to make a separate peace with the Dutch; resolved to address him to disband all the forces raised since 1663; and appointed a committee to inspect the laws lately made in Scotland, whereby an army* was authorized to march directly into England or Ireland by the sole direction of the council of Scotland. They took into considera-

* The act for raising this army in Scotland was passed in 1669, by the artifice and influence of Lord Lauderdale, the king's commissioner. An account of it is given in a letter from him to King Charles, and is the same which Bishop Burnet says Lord Lauderdale was to be impeached upon.—*Burnet's History*, vol. i. p. 286.

¹⁰³ Buckingham threw all the blame upon Arlington, who, notwithstanding the ridicule his appearance and manner excited at court, (see the *Memoirs of De Grammont*,) defended himself so well that the proceedings were abandoned. In the debate upon Buckingham's case, there are many circumstances mentioned that give an idea of the wild pranks which the king and his ministers joined in.

tion, likewise, the state of Ireland, with regard to religion, the militia, and the forces of that kingdom.

A. D.
1673-4.

Lord Shaftesbury, who had infused this spirit into the house of commons, contrived and promoted, by his friends, a bill “for better securing the liberty of the subject.” The house appointed a committee to inspect the laws, and to consider how the king might commit any subject by his immediate warrant, and how the law then stood touching the committing of persons by the council table. Upon the report from the committee, a bill was ordered to be brought in concerning writs of habeas corpus, which was read three times, and passed the house.¹⁰⁴ It did not, however, pass into an act at this time; for the king, alarmed at the vigour of the commons, on the 24th of February, prorogued the parliament to the 10th of November following, before any bill was ready for the royal assent. The prorogation was afterwards continued, and lasted about fourteen months.

Parliament
prorogued.

After this prorogation, Lord Shaftesbury retired to his seat in Dorsetshire, where he lived

¹⁰⁴ February 7.

A. D.
1673-4.

in a manner becoming the ancient hospitality of a nobleman, and suitable to his estate, which was not in the least improved by the valuable offices he had enjoyed.

As his removal from the place of chancellor was known to be owing to the Duke of York and the popish faction, it added lustre to his character, and greatly increased his popularity among his countrymen.

In order to lessen this popularity, reports were industriously propagated that he was about to return to court, and that some great office was to be given him; but, having fixed his resolution never to enter into the measures of the junto, he resolved, at the same time, to obviate these reports by remaining in the country till his duty in parliament should summon him to town.

The spirit which had been raised in parliament soon exerted and diffused itself through the nation. The influence of the Duke of York, the danger of popery, the power of France, and the mal-administration of the ministry, were the universal topics of discourse and the constant subjects of censure.

A.D. 1674.
Arbitrary
proclama-
tion.

To check and stifle this spirit, a proclamation was published in the London Gazette, May the

7th, 1674, strictly forbidding all persons “ to A.D. 1674. intermeddle with the affairs of state and government, or with the persons of any of his majesty’s counsellors or ministers, in their common and ordinary discourses; and farther declaring, that his majesty would proceed with all severity, not only against such persons, but also against those who should be present where such speeches were used without revealing the same in due time.”

This was a step worthy only of a despotic government, and an equal proof of the wickedness and weakness of the ministers. They betrayed by it, to the public, a consciousness of having acted ill, and a resolution to persist in doing so; and they fled to an asylum in which they could not hope for a protection. To shut the eyes, or stop the ears, of people in danger of shipwreck, is impossible; and, therefore, to attempt it is ridiculous. As every man in the ship hath an interest in her safety, he has a right to point out the rocks or shallows upon which the pilots are ignorantly or wilfully running.

The ministry had recourse to another refuge, safer for themselves, but even yet more pernicious to the public; for the first was an act of arbitrary power, which every man could see, The ministry endeavour to corrupt the parliament.

A.D. 1674. could feel the effects of, and must consequently resent; the latter was an arrow shot in the dark, which, though not immediately fatal, could not but leave a wound too rancorous to be easily cured. This was a destructive corruption which was now spreading in the parliament: for the court not only by the influence of places, but also by pensions, secured in its interest several members of the house of commons; and thus was a venom infused into the constitution, which would have eaten out the vitals of it, had that parliament continued much longer.

Lord
Shaftesbury
solicitous
for a new
parliament.

Lord Shaftesbury was well acquainted with this step of the ministers, and was sensible of the unhappy consequences with which it would be attended. He concluded that a parliament which was devoted to the king solely from a view to private interest, could not be really useful to the public. As the apprehensions of the people with regard to the designs of the court were very great, he looked on a new parliament as the only means of establishing harmony between the king and the nation. He therefore thought that an application to his majesty to call one would be seasonable and proper; that it was the right of any part of the

nobility to give advice to the king in the recess of parliament; and that, by the old constitution, this was their hereditary and undoubted privilege: a glorious privilege! and worthy of being asserted by them; a privilege that, by bringing them nearer to the throne, must add to their dignity; and which, when properly exerted, could not but cause them to be respected by the people, as the constant maintainers of their rights and liberties. A.D. 1674.

That these were Lord Shaftesbury's sentiments, appears from the following excellent letter to the Earl of Carlisle; which displays likewise his regard for the king and duke, his attachment to the public, and his firm adherence to his principles.

Feb. 3, 1674-5.

“MY LORD,

“I very much approve of what my Lord Mordaunt and you told me you were about; and should, if I had been in town, readily have joined with you, or, upon the first notice, have come up: for it is certainly all our duties, and particularly mine, (who have borne such offices under the crown,) to improve any good correspondence or understanding between the royal A.D.
1674-5.
His letter
to the Earl
of Carlisle.

A. D.
1674-5.

family and the people, and not leave it possible for the king to apprehend that we stand on any terms that are not as good for him as necessary for us. Neither can we fear to be accounted undertakers at the next meeting of parliament, for I hope it shall never be thought unfit for any number of lords to give the king privately their opinion when asked; since, in former days, through all the northern kingdoms, nothing of great moment was acted by their kings without the advice of the most considerable and active nobility that were within distance, though they were not of the ordinary privy council; such occasions being not always of that nature as did require the assembling the great council or parliament. Besides, there are none so likely as us, nor any time so proper as now, to give the only advice I know truly serviceable to the king, affectionate to the duke, and secure to the country, (that is, a new parliament,) which I will undertake at any time to convince your lordship is the clear interest of them all.

“ But, in the mean time, I must beg yours and my Lord Mordaunt’s pardon that I came not up as I intended; for I hear, from all quarters, of letters from Whitehall that I am coming

up to town; that a great office, with a strange name is preparing for me; and such like. I am ashamed I was thought so easy a fool by those who should know me better; but, I assure your lordship, there is no place or condition will invite me to court during this parliament, nor until I see the king thinks frequent parliaments as much his interest as they are the people's rights; for, until then, I can neither serve the king as I would, nor think a great place safe enough for a second adventure.

A. D.
1674-5.

“When our great men have tried a little longer, they will be of my mind. In the mean time, no kind of usage shall put me out of that duty and respect I owe to the king and duke: but I think it would not be amiss for the men in great offices, who are at ease and where they would be, to be ordinarily civil to a man in my condition, since they may be assured that all their great places put together shall not buy me from my principles. My lord, I beseech you to impart this to the Earl of Salisbury, my Lord of Falconbridge, and my Lord Holles; and when you four command me up, I will obey.

“I am sorry my Lord Halifax had no better success in his summer's negotiation; and that his

A. D.
1674-5.

uncle Sir William could make no nearer approach to the ministers of state than the kissing the king's hand. I fear it is fatal to his lordship to go so far, and no farther.

“ My dear Lord,

“ I am, most affectionately and sincerely,

“ Your Lordship's most devoted servant,

“ SHAFTESBURY.”

A.D. 1675.
Meeting of
Parliament.

Vigorous
proceed-
ings of the
commons.

On the 13th of April 1675, the parliament met,¹⁰⁵ when, notwithstanding the intrigues of the court, an extraordinary vigour still appeared in the house of commons against the growth of popery, the ministers who supported or connived at it, the state of affairs in Scotland, and the English troops being employed in the service of France. This spirit was generally and justly attributed to Lord Shaftesbury; upon which, Rapin, after relating the transactions of the commons, makes the following remark:

“ It may be easily inferred from these proceedings of the commons, that they were extremely jealous of the king and his ministers, and did

¹⁰⁵ It had been prorogued until this date, in consideration of five hundred thousand crowns paid by Louis to Charles for that purpose.

not doubt of the court's intention to introduce popery and invade the liberties of the subject. A.D. 1675.
 Those who would wholly ascribe the ill humour of the commons to Shaftesbury's influences, can hardly answer the above-mentioned facts, which would not be less true though the Earl of Shaftesbury had never been born."

This ill humour, as it is called, was then thought by the public, and has been since judged by the concurrent testimony of the wisest men, to be a true spirit of patriotism. This it was which saved the liberties of the nation at that time from the arbitrary designs of the court, and laid the foundation for securing them afterwards by the Revolution.

Whilst Lord Shaftesbury was thus working by his address in the house of commons, he gave shining proofs of his knowledge and his eloquence in the house of lords; where a bill, most evidently destructive of the constitution, was brought in by the ministry, intituled, "An act to prevent the dangers which may arise from persons disaffected to the government." By this bill, all persons who enjoyed any office, ecclesiastical, civil, or military, all privy counsellors and members of parliament, were obliged, under penalty,

Destructive
bill in the
house of
lords ;

A.D. 1675. to take the oath which had been introduced first in the corporation, then in the militia act, and, afterwards, more fully, in the five-mile act. The oath has been already mentioned, but it may not be improper to repeat it: "I do declare that it is not lawful, upon any pretence whatsoever, to take up arms against the king; and that I do abhor that traitorous position of taking arms by his authority against his person, or against those that are commissioned by him in pursuance of such commission; and I do swear, that I will not, at any time, endeavour the alteration of government either in church or state. So help me God."

the oath
enjoined by
it.

This bill was a large stride towards the establishment of arbitrary power. It was brought in to settle the doctrine of passive obedience by legislative authority, and by one bold act to shackle the parliament as well as the rest of the nation. For though, in the progress of the debate, a proviso was added that the privileges of parliament should be preserved in the freedom of debates and votes, yet the oath was to remain as a prohibition, even upon the members of either house, against any endeavour, by speech, writing, or

otherwise, to make any alteration in church or state farther than by speaking and voting in parliament. A.D. 1675.

Lord Shaftesbury was the first who appeared against this bill. He, and some other lords, strenuously insisted that it should be withdrawn, or else that the freedom which must necessarily be used in opposing it might not be misconstrued. The court, and its satellites the bishops, strove earnestly for the committal of the bill; upon which, Lord Shaftesbury, who, "in all the variety of changes of the last age, was never known to be either bought or frightened out of his public principles," * described at large the ill designs and consequences of the bill; and spoke †

Opposed by
Lord
Shaftesbury
and other
lords.

* A Letter from a Person of Quality to his Friend in the country.

† Bishop Burnet acknowledges Lord Shaftesbury's distinguishing himself on the occasion of this bill; and says, "He spoke once a whole hour to show the inconveniency of condemning all resistance upon any pretence whatsoever; and the very ill consequence it might be of to lay such an oath on a parliament. And

yet, though his words were watched, so that it was resolved to have sent him to the Tower if any one word had fallen from him that had made him liable to such a censure, he spoke both with so much boldness and so much caution, that, though he provoked the court extremely, no advantage could be taken against him."—*Burnet's History*, vol. i. p. 384—5.

A.D. 1675. with such convincing reasons, that it was not referred to a committee of the whole house till after a debate of five days ; a circumstance which hardly ever happened to any bill before.

Protests
against it.

Four protests were entered against several steps which were taken in the first progress of it ; and these were chiefly drawn up by Lord Shaftesbury. The second, which was against committing the bill, asserted, “ that it struck at the root of government, and that freedom of voting and debating which is necessary for those who have the power to alter and make laws ; and that the bill obliged every man to abjure all endeavours to alter the government in the church, without regard to anything that rules of prudence in the government, or christian compassion to protestant dissenters, or the necessity of affairs, at any time might require.”

This protest was no sooner entered and subscribed, but the court lords and the bishops raised a storm against those who had subscribed it ; and endeavoured to take away the liberty of entering protests with reasons. They voted, “ that the reasons given in the said protest did reflect upon the honour of the house, and were of dangerous consequence.” This was attended by another

protest against that vote: which protest raised a still greater flame in the house, and called forth a noble instance of the spirit of Lord Holles, who supported, with great learning, the liberty of protesting with reasons; and who, having been absent by sickness at the former question, desired that he might then have leave to sign the protest, and take his fortune with those lords who had already done it and were in danger of being sent to the Tower. A.D. 1675.

During the debate in the committee, an objection was made to the oath, that no care was taken of the doctrine, but only of the discipline of the church; and, therefore, that the papists need not scruple taking the oath, since episcopacy would remain in its full lustre, though the popish religion should be introduced; whereas the king's supremacy would be jostled aside by the oath, and room be made for an ecclesiastical supremacy. In consequence of this objection, the advocates for the bill changed that part of the oath, as follows: Further progress of the debate.

“ I do swear, that I will not endeavour to alter the protestant religion, or the government either of church or state.”

In opposition to this amendment, Lord Shaftes-

A.D. 1675. bury urged that it was a far different thing to believe, or be fully persuaded of, the truth of the doctrines of our church, and to swear “never to endeavour to alter it;” which last must be utterly unlawful, unless an infallibility should be placed either in the church or the person who took the oath; every man being, otherwise, obliged to change his views and conduct upon having a clearer or better light: and he desired leave to ask “where are the boundaries, or where shall we find how much is meant by the protestant religion?”

The definition of the protestant religion, by some of the bishops.

The lord keeper, who was now Lord Finch, thinking he had an advantage, desired, with his usual eloquence, that it might not be told in Gath, nor published in the streets of Askelon, that a lord of so great parts and eminence, and professing himself a member of the church of England, should not know what is meant by the protestant religion! Then the Bishop of Winchester and other bishops condescended to instruct Lord Shaftesbury, “that the protestant religion was comprehended in the thirty-nine articles, the liturgy, the catechism, the homilies, and the canons.”

Lord Shaftesbury's reply.

To this Lord Shaftesbury replied, that he begged so much charity of them as to believe that he

knew the protestant religion so well, and was so confirmed in it, that he hoped he should burn for the witness of it if Providence should call him to it: but he might, perhaps, think some things not necessary which they accounted essential; nay, he might think some things not true, or agreeable to the Scripture, that they might call doctrines of the church. Besides, when he was to swear “never to endeavour to alter,” it was certainly necessary to know how far the just extent of this oath was. But since they had told him that the protestant religion was in those five tracts, he had still to ask “whether they meant that those whole tracts were the protestant religion, or only that the protestant religion was contained in them?” If they meant the former of these, then he was extremely in the dark to find the doctrine of predestination, in the seventeenth and eighteenth articles, to be owned by so few great doctors of the church; and to find the nineteenth article define the church directly as the Independents did. Besides, the twentieth article’s manner of stating “the authority of the church” was very dark, and either contradicted itself, or said nothing, or what was contrary to the known laws of the land; not to mention that several other

A.D. 1675.

A.D. 1675. things in the thirty-nine articles had been preached and written against by men of great favour, power, and preferment in the church.

He humbly conceived the liturgy was not so sacred, being drawn up by men the other day, under a pretence of making such alterations as might the better unite people; instead whereof, there was scarce one alteration but widened the breach; and no ordination was allowed here by the liturgy (as it stood last reformed in the act of uniformity) but what was episcopal: insomuch that a popish priest was capable, when converted, of any church preferment without re-ordination; whereas every protestant minister, not episcopally ordained, was required to be re-ordained. Thus as much as possible had been done to unchurch all the foreign protestants that had not bishops; though the contrary was both allowed and practised from the beginning of the Reformation till the time of the uniformity act, and several bishops had been made of such as were never ordained priests by bishops. Moreover, the uncharitableness of it was so much against the interest of the crown, and of the church of England, (as it cast off the dependency of the whole protestant party abroad,) that it would have been bought

by the pope and the French king at a vast sum A.D. 1675.
of money; and it was difficult to conceive that so great an advantage fell to them merely by chance, and without their help: so that he thought to endeavour to alter and restore the liturgy* to what it was in Queen Elizabeth's days, might consist with his being a very good protestant.

As to the catechism, he really thought it might be mended; and durst declare to them, it was not well that there was not a better made.

For the homilies, he thought there might be a better book made; and the third homily of "repairing and keeping clean of churches," might be omitted.

What was yet stranger, the canons of our church were directly the old popish canons, which were still in force, and no other; as would appear by the statute 25 Hen. VIII. cap. 19. confirmed and received by 1 of Elizabeth, whereby all those canons were established until an alteration should be made by the king in pursuance of that act:

* As Lord Shaftesbury said that he thought the liturgy might be mended, he himself began an improvement of it, for the consideration of the bishops; and there is still ex-
tant among his fragments a paper, wherein he had selected psalms for particular services in the church, which are extremely well chosen.

A.D. 1675. which thing was attempted by Edward VI. but not perfected, and was let alone ever since ; for what reasons, the lords the bishops could best tell : and it was very hard to be obliged by oath not to endeavour to alter either the English Common Prayer Book or the Canon of the Mass.

But if they meant the latter,—that “ the protestant religion was contained in all those tracts, but that every part of them was not the protestant religion,”—then he apprehended it might be in the bishops’ power to declare, *ex post facto*, what was the protestant religion or not, or else they must leave it to every man to judge for himself what parts of those books were or were not ; and then their oath had been much better let alone.

The bishops make no reply. If the lord keeper and the bishops triumphed over Lord Shaftesbury before his reply, they had no reason to do it afterwards ; for what he said was not answered by any of them.

This knowledge which, in an unpremeditated reply, he showed of the doctrines of the Church of England, proved the justness of King Charles’s remark, “ that his chancellor had more law than all his judges, and more divinity than all his bishops.” ¹⁰⁶

¹⁰⁶ This anecdote is related by Seward, vol. iv. p. 54.

Lord Shaftesbury, standing near the bishops' bench one day, when he spoke long in this debate, overheard one of the bishops saying to another, "I wonder when he will have done preaching?" He immediately turned round and replied, "When I am made a bishop, my lord;" and then proceeded in his speech to the house.

A.D. 1675.

Repartee
of Lord
Shaftes-
bury's.

Notwithstanding a proviso was obtained by the country lords for preserving the freedom of debates and votes in parliament, an objection was still made to the bill by the Earl of Bolingbroke, that a restraint was laid even upon members of parliament out of doors; and that the oath took away all private converse upon any public parliamentary affairs even with one another.

Further
debate on
the bill.

Upon this, Lord Shaftesbury presently drew up some words for preserving the rights, privileges, and freedoms which men enjoyed by the law established. He was supported by many others in his motion; but was strongly opposed by the courtiers, who plainly declared that they designed by the bill to prevent caballing, and to hinder parliament men from consulting with persons in public offices, either of the army, treasury, or navy, about parliamentary business: they

The bill
was
passed
on
the
10th
of
the
month.

A.D. 1675. silenced every objection by their majority of votes.

Mean spirit
of the no-
bility.

Though there were many worthy persons among the nobility, who were true lovers of their country and asserters of its liberties, the greater part meanly acted under the influence of the court, and in subservience to the commands of the ministers. Unmindful of the virtues of their ancestors, their only emulation was to acquire wealth or excel in luxury; and they were contented to load themselves with chains, provided these chains were more glittering than those of their fellow-subjects. It was a melancholy presage for the public, when the men whose example was the most likely to be imitated became thus depraved, and when the foremost in rank were generally the first in corruption.

The bill
pushed on
by the court.

This bill, which would have rendered parliaments entirely useless, was so highly agreeable to the court, that the ministry exerted their utmost strength in its favour. Just before the meeting of parliament, a privy seal was passed for eighty thousand pounds secret-service money. The design of this money was to prepare the two houses to concur in the bill, and it actually secured a majority in each house. But this measure, and

the dangerous tendency of the bill, only served A.D. 1675.
 to animate the lords in the opposition; who, by
 their constant and close attendance, and by the
 strength of their arguments, checked the progress
 of it in such a manner, that the debates upon it
 continued for seventeen days.

CHAPTER IV.

Dr. Shirley's Appeal.—Lord Shaftesbury's Speech in the Debate.

—Contention between the two Houses—Its effects.—Parliament prorogued for fifteen months.—Pamphlets against Shaftesbury.—Meeting of Parliament.—Lord Shaftesbury contends that the Parliament was dissolved—Is committed to the Tower.

A.D. 1675.

THE vigorous stand made by the opposition against this bill, rendered the court still more intent upon succeeding in its scheme; and therefore another privy seal was passed for one hundred and twenty thousand pounds more, for the same service; and every question was carried in spite of the force of argument. But what truth could not do, Lord Shaftesbury effected by his policy.

Having gained time, by the spirit which appeared against the bill, he contrived, before it could be reported from the committee, to raise such a difference between the houses, upon a point of privilege, as rendered their sitting impracticable, and defeated the intentions of the court.

An appeal from a decree in chancery had been brought into the house of lords by Dr. Shirley, against Sir John Fagg, a member of the house of commons. The lords received the appeal; which was resented by the commons, and declared to be a breach of privilege. They likewise passed a vote, that no appeal from any court of equity was cognizable by the house of lords, and ordered Dr. Shirley into the custody of the serjeant-at-arms. The speaker's warrant for doing this was forcibly taken from the serjeant's deputy by Lord Mohun. The commons demanded justice of the peers against him; but he was so strongly supported by Lord Shaftesbury and others, that the lords justified by a vote what he had done. The house of commons ordered the barristers who pleaded in the cause to be taken into custody,¹⁰⁷ and the lords immediately ordered their release. These steps, which were pursued with great heat

A.D. 1675.

Dr. Shirley's appeal.

Difference between the lords and commons.

¹⁰⁷ During the debate upon this resolution, some ladies were in the gallery peeping over the gentlemen's shoulders. The speaker spying them called out, "What borough do those ladies serve for?" To which Mr. William Coventry replied, "They serve for the speaker's chamber." Sir Thomas Littleton suggested that the speaker should suppose they were gentlemen with fine sleeves dressed like ladies. "Yes; but I am sure I saw petticoats," rejoined the speaker.—*Grey*.

A.D. 1675.

Parliament
prorogued.

in both houses, obliged the king to prorogue the parliament on the 9th of June to the 13th of October following.

The bill
defeated by
the breach
between the
houses.

Lord Shaftesbury's scheme was improved with great art and vigour, till it produced an open rupture between the houses; and probably no other method could have been taken to defeat the pernicious bill; for the majority of the commons, by the great sums dispersed among them, were ready to pursue the directions of the court. They would not, however, give up a point of privilege; and their jealousy upon the occasion inflamed them by degrees till they had gone too far to retreat. This was not foreseen by the ministry till it was too late to be prevented, so that it rendered void all the proceedings of that session.

Schemes for
obtaining a
dissolution
of parlia-
ment.

The views of the court, and the disposition of the commons, made Lord Shaftesbury the more earnest to procure a dissolution of the parliament. This was the frequent subject of his discourse, the constant object of his thoughts, during the prorogation. He endeavoured to persuade the principal members in both houses (as he told Lord Carlisle, in his letter, he was ready to do) that a new parliament would be for the interest both of the prince and people. At the same time, he

resolved to foment the quarrel between the houses A.D. 1675.
at their meeting; that the court might grow
weary of the parliament, and be more readily in-
duced to dissolve it.

The Duke of York and the papists were brought into a belief that a new parliament might be more favourable to them; for, though the present parliament had gone such lengths in extending the prerogative, it had been too vigorous against popery to relax, or to give the Roman catholics any hopes of repealing, the penal laws against them. Whilst, therefore, Lord Danby and others of the ministry were apprehensive of its meeting, though the court was in necessity for a supply, the duke was solicitous for it, with the expectation of some steps being taken that might bring about the dissolution, for which he and most of his friends afterwards voted. This was, undoubtedly, what his secretary, Coleman, alluded to in the following paragraph of a letter to the inter-nuncio, dated at Windsor, August the 30th, 1675.

“ We now passionately wish to see the coming on of the parliament, which we so much feared before: and, while it was held doubtful whether it ought to meet or no, we employed all our power

A.D. 1675. to bring it on; which point we have gained but within these few days. And, for my part, I no ways doubt but that we shall receive as much good by it as we apprehended ill, provided that the duke fail not in the good resolutions which he hath taken."

Lord
Shaftesbury
affronted by
Lord Digby.

Lord Shaftesbury was, at this time, pointed out as the principal object of the court's displeasure. Frequent menaces were thrown out against him; but he was not affected by them, or diverted from his pursuits. Being in Dorsetshire during part of the recess of parliament, Lord Digby applied to him for his interest to be chosen knight of the shire in the room of Colonel Strangeways, deceased. Lord Shaftesbury said that he could give no answer till he knew whether his friend Mr. Freke would be a candidate; and afterwards, with great frankness, told Lord Digby that he could not support his interest, and gave him his reasons. Lord Digby, soon after, on the 27th of August 1675, before a great assembly of the principal persons of the county at Fernditch Lodge, said to him, in a passion, "You are against the king, and for seditions and factions, and for a commonwealth, and I will prove it; and by God we will have your head next parliament."

What design this threat was grounded on is not known, but the Earl of Bristol, (Lord Digby's father and a Roman catholic,) on the 20th of November, attempted in the house of lords to charge Lord Shaftesbury with crimes of a high nature.¹⁰⁸ It does not appear by the Journals what the charge was; but it is recorded in them, that the lords, by an unanimous vote, declared that the charge was groundless, and ordered the Earl of Bristol to ask Lord Shaftesbury's pardon.

A. D. 1675.

and accused
in parlia-
ment by
Lord Bris-
tol.

As the affront which he had received from Lord Digby was public, he resolved that the satisfaction should be so likewise. He brought an action against him in the king's bench: the words

¹⁰⁸ This occurred in a debate upon a copy of one of the commons' resolutions in Dr. Shirley's case, which had been posted up in the lobby of their house. The Earl of Bristol was, as usual, very intemperate; and the house compelled him to beg Shaftesbury's pardon, and resolved that nothing he had said had made any impression upon them to that earl's prejudice: but it does not appear that Bristol attempted to make any formal charge upon this occasion.

This was not the only quarrel which happened during this stormy debate. The house found it necessary to enjoin the Earl of Shaftesbury and Lord Arundel, "that there be no further proceedings to any resentment upon any words passed between them this day." "Upon which," say the Journals, "they both presently promised obedience to the command of the house."

A.D. 1675. were attested by several gentlemen present; and the jury gave eleven hundred and fifty pounds damages.

Meeting of
parliament.

When the parliament met, on the 13th of October, the court was so apprehensive of a revival of the quarrel between the houses, that the king, in his speech, desired, "if anything of that kind should arise, they would defer those debates till they had brought the public bills to perfection."

The design of this advice, and the consequences that would have attended a compliance with it, were obvious. Dr. Shirley's appeal was therefore soon brought in: and upon a motion being made, on the 20th of October, to appoint a day for the hearing, the ministry strenuously opposed it; but Lord Shaftesbury as strongly supported it, in the following remarkable speech:¹⁰⁹

"My Lords,

Lord Shaftesbury's
speech on
Dr. Shirley's ap-
peal.

"Our all is at stake, and therefore you must give me leave to speak freely before we part with it. My lord bishop of Salisbury is of opinion 'that we should rather appoint a day to consider what to do upon the petition, than to appoint a

¹⁰⁹ This debate lasted six days, and was not closed until the 4th of November.

day of hearing ;' and my lord keeper (for I may A.D. 1675.
name them at a committee of the whole house)
tells us, in very eloquent and studied language,
' that he will propose us a way far less liable to
exception, and much less offensive and injurious
to our own privileges, than that of appointing a
day of hearing.' I beseech your lordships, did
not you, after all these fine words, expect some
admirable proposal? But it ended in this, ' that
your lordships should appoint a day,—nay, a very
long day,—to consider what you would do in it.'
And my lord hath undertaken to convince you
that this is your only course, by several undeni-
able reasons; the first of which is, ' that it is
against your judicature to have this cause, which
is not proper before us, nor ought to be relieved
by us.'

"To this, my lords, give me leave to answer,
that I did not expect, from a man professing the
law, that after an answer by order of the court
was put in, and a day had been appointed for
hearing, (which by some accident was set aside,)
and the plaintiff moved for a second day to be
assigned, that ever, without hearing counsel on
both sides, the court did enter into the merits of
the cause: and if your lordships should do it

A.D. 1675. here, in a case attended with the circumstances this is, it would not only be an apparent injustice, but a plain subterfuge to avoid a point you durst not maintain.

“ But my lord’s second reason speaks the matter more clearly, — because it is a doubtful case whether the commons have not privilege ; and, therefore, my lord would have you to appoint a further and a long day to consider of it ; which in plain English is, that your lordships should confess, upon your books, that you conceive it, on second thoughts, a doubtful case : for so your appointing a day to consider will do, and that for no other reason but because my lord keeper thinks it so ; which, I hope, will not be a reason to prevail with your lordships, since we cannot yet, by experience, tell that his lordship is capable of thinking your lordships in the right in any matter against the judgment of the house of commons ; it is so hard a thing, even for the ablest of men, to change ill habits.

“ But my lord’s third reason is the most admirable of all, which he styles unanswerable, viz. that your lordships are all convinced in your consciences that this (if prosecuted) ‘ will cause a breach.’ I beseech your lordships, consider whe-

ther this argument, thus applied, would not over-
throw the law of nature, and all the laws of right
and property in the world: for as it is an argu-
ment, and a very good one, that you should not
stand or insist on claims where you have not a
clear right, or where the question is not of con-
sequence and moment, in a matter that may pro-
duce a dangerous or pernicious breach between
relations, persons, or bodies politic, joined in in-
terest and high concerns together; so, on the
other hand, if the obstinacy of the party in the
wrong shall be made an unanswerable argument
for the other party to recede and give up his just
rights, how long shall the people keep their liber-
ties, or the princes or governors of the world their
prerogatives? How long shall the husband main-
tain his dominion, or any man his property, from
his friend's or his neighbour's obstinacy? But,
my lords, when I hear my lord keeper open so
eloquently 'the fatal consequences of a breach,'
I cannot forbear falling into some admiration
how it comes to pass that, if the consequences be
so fatal, the king's ministers in the house of com-
mons, of which there are several that are of the
cabinet, and have daily resort to his majesty, and
have the direction and trust of his affairs; I say,

A.D. 1675.

A.D. 1675. that none of those should press these consequences there, or give the least stop to the career of that house in this business ; but that all the votes concerning this affair,—nay, even that very vote, ‘that no appeal from any court of equity is cognizable by the house of lords,—should pass *nem. contradicente*, and yet all the great ministers with us here, the bishops, and other lords of great dependence on the court, contend this point as if it were *pro aris et focis*.

“ I hear, his majesty, in Scotland, hath been pleased to declare against appeals in parliament. I cannot much blame the court, if they think that (the lord keeper and the judges being of the king’s naming, and in his power to change,) the justice of the nation is safe enough : and I, my lords, may think so too, during the king’s time ; though, I hear, Scotland, not without reason, complains already. Yet who can see how future princes may use this power, and how judges may be made,—not men of ability or integrity, but men of relation and dependence, and who will do what they are commanded ; and then all men’s causes come to be judged, and estates to be disposed of, as great men at court shall please ?

“ My lords, the constitution of our government

hath provided better for us; and I can never be- A.D. 1675.
lieve so wise a body as the house of commons
will prove that foolish woman, who plucks down
her house with her own hands.

“My lords, I must presume, in the next place,
to say something to what was offered by my lord
bishop of Salisbury, a man of great learning and
abilities, and always versed in a stronger and
closer way of reasoning than the business of that
noble lord I answered before did accustom him
to do: and that reverend prelate hath stated the
matter very fair upon two heads.

“The first, whether the hearing of causes and
appeals, and especially in this point, where the
members have privilege, be so material to us
that it ought not to give way to reasons of state,
or greater affairs that press us at this time.

“The second was, if this business be of that
moment, yet, whether the appointing a day to
consider of this petition would prove of that
consequence and prejudice to your cause.

“My lords, to these give me leave, in the first
place, to say, that this matter is no less than your
whole judicature; and your judicature is the life
and soul of the dignity of the peerage of England.
You will quickly grow burthensome if you grow

A.D. 1675. useless. You have now the greatest and most useful end of parliament principally in you ; which is, not to make new laws, but to redress grievances, and to maintain the old land-marks. The house of commons' business is to complain ; your lordships' to redress, not only the complaints from them who are the eyes of the nation, but all other particular persons who address themselves to you.

“ A land may groan under a multitude of laws, and I believe ours does ; and when laws grow so multiplied, they prove oftener snares than directions and security to the people. I look on it as the ignorance and weakness of the latter age, if not worse,—the effect of the designs of ill men,—that it is grown a general opinion, that where there is not a particular direction in some act of parliament, the law is defective ; as if the common law had not provided much better, shorter, and plainer for the peace and quiet of the nation than intricate, long, perplexed statutes do, which have made work for the lawyers, given power to the judges, lessened your lordships' power, and, in a good measure, unhinged the security of the people.

“ My lord bishop tells us, that ‘ your whole judicature is not in question, but only the privi-

lege of the house of commons, of their members A.D. 1675.
not appearing at your bar.' My lords, were it
no more, yet, for justice and the people's sake,
you ought not to part with it. How far a privi-
lege of the house of commons, their servants, and
those they own, doth extend, Westminster-hall
may with grief tell your lordships. And the
same privilege, of their members being not sued,
must be allowed by your lordships as well. And
what a failure of justice this would prove, whilst
they are lords for life, and you for inheritance, let
the world judge.

“For my part, I am willing to come to a con-
ference whenever the dispute shall begin again,
and dare undertake to your lordships that they
have neither precedent, reason, nor any justifiable
pretence to show against us; and therefore, my
lords, if you part with this undoubted right
merely for asking, where will the asking stop?
And, my lords, we are sure it doth not stop here;
for they have already, *nemine contradicente*, voted
against your lordships' power of appeals from any
court of equity! so that you may plainly see
where this caution and reason of state means to
stop, — not one jot short of laying your whole
judicature aside

A.D. 1675.

“For the same reason, of passing the king’s money, of not interrupting good laws, or whatever else, you must of necessity avoid all breach upon what score soever. Thus, your lordships plainly see, the breach will be as well made upon your judicature in general, as upon this point; so that, when your lordships have appointed a day, a very long day, to consider whether Dr. Shirley’s cause be not too hot to handle, and when you have done the same for Sir Nicholas Stanton, whose petition, I hear, is coming in, your lordships must proceed to a vote to lay all private business aside for six weeks: for that phrase, of private business, hath obtained, this last age, upon that which is your most public duty and business, namely, the administration of justice. And I can tell your lordships, besides the reason that leads to it, that I have some intelligence of the designing such a vote; for, on the second day of your sitting, at the rising of the lords’ house, there came a gentleman into the lobby, belonging to a very great person, and asked, in very great haste, ‘Are the lords up? Have they passed the vote?’ and being asked, ‘What vote?’ he answered, ‘The vote for no private business for six weeks.’

“My lords, if this be your business, see where

you are if you are to postpone our judicature, for A.D. 1675. fear of offending the house of commons, for six weeks, that they, in the interim, may pass the money, and other acceptable bills, which his majesty thinks of importance. Are so many wise men in the house of commons to be laid asleep, and to pass all these acceptable things, and, when they have done, to let us to be let loose upon them? Will they not remember this, next time, when there is want of money? Or, may they not rather be assured by those ministers that are amongst them, and go on so unanimously with them, that the king is on their side in this controversy? And, when public business is over, our time shall be too short to make a breach, or vindicate ourselves in the matter; and then, I beg your lordships, where are you? If, after you have asserted, but the last sessions, your right of judicature so highly even in this point, and after the house of commons had gone so high against you, on the other hand, as to post up their declaration and remonstrances on Westminster-hall doors, the very next session after, you postpone the very same causes, and not only those, but all judicatures whatsoever, I beseech your lordships, will not this prove a full precedent and confession against ourselves.

A.D. 1675.

“It is a maxim, and a rational one, amongst the lawyers, that one precedent, where the case has been contested, is worth a thousand where there has not been a contest.

“My lords, in saying this, I humbly suppose I have given a sufficient answer to my lord bishop's second question, ‘Whether the appointing a day to consider what you will do with this petition be of that consequence to your right?’ for it is a plain confession that it is a doubtful case, and that infinitely stronger than if it were a new thing to you, never before heard of; whereas it is the very same case, and every thing desired in that case, that you formerly ordered and so strongly asserted; so that, after due time, and all the deliberation imaginable, you declare yourselves to become doubtful; and put yourselves out of your own hands, into that power which you have no reason to believe is on your side the question.

“My lords, I have all the duty imaginable to his majesty; and shall, with all submission, give way to anything he shall think of importance to his affairs. But, in this point, it is to alter the constitution of the government, if you are asked to lay this aside; and there is no reason of state can be an argument to throw yourselves out of that

interest you have in the constitution of the government. A.D. 1675. It is not only your concern that you maintain yourselves in it; but it is the concern of the poorest man in England that you keep your station. It is your lordships' concern, and that so highly, that, I will be bound to say, the king can give none of you a requital or a recompense for it. What are empty titles? What is present power, or riches, and a great estate, wherein I have no firm, fixed property? It is the constitution of the government, and maintaining it, that secures your lordships, and every man else, in what he hath. The poorest lord, if the birthright of his peerage be maintained, has a fair prospect before him for himself or his posterity. But the greatest title, with the greatest power and riches, is but a mean creature; and maintains those in absolute monarchies no otherwise than by servile and low flatteries, and upon uncertain terms.

“ My lords, it is not only your interest, but the interest of the nation, that you maintain your rights; for, let the house of commons and gentry of England think what they please, there is no prince that ever governed without nobility or an army. If you will not have one, you must have the other, or the monarchy cannot long sup-

A.D. 1675. port or keep itself from tumbling into a democratical republic. Your lordships and the people have the same cause and the same enemies. My lords, would you be in favour with the king? it is a very ill way to it, to put yourselves out of a future capacity to be considerable in his service. I do not find in story or in modern experience, but that it is better, and a man is much more regarded, who is still in a capacity and opportunity to serve, than he that hath wholly deprived himself of all for his prince's service; and, therefore, I declare, that I will serve my prince as a peer, but will not destroy the peerage to serve him.

“My lords, I have heard of twenty foolish models, expedients to secure the justice of the nation and yet to take this right from your lordships;—as, the king, by his commission, appointing commoners to hear appeals; or, that the twelve judges should be the persons; or, that persons should be appointed by act of parliament: which are all not only to take away your lordships' just right, that ought not to be altered, any more than any other part of the government; but are in themselves, when well weighed, ridiculous.

“I must deal freely with your lordships: these things could never have risen in people's

minds without some kind of provocation that has A.D. 1675.
given the first rise to it. Pray, my lords, forgive me if, on this occasion, I put you in mind of committee dinners, and the scandal of it; as, also, those droves of ladies that attend all causes. It was come to that pass, ' that men hired, or borrowed of their friends, handsome sisters or handsome daughters to deliver their petitions: but yet, for all this, I must say that your judgments have been sacred, unless in one or two causes; and those we owe most to that bench from whence we now apprehend most danger.

“ There is one thing I had almost forgot to speak to, which is the conjuncture of time, the hinge on which the reason of state turns; and to that, my lords, give me leave to say, if this be not a time of leisure for you to vindicate your privileges, you must never expect one. I could almost say, that the harmony, good agreement, and concord, which are to be prayed for at other times, may be fatal to us now. We owe the peace of these last two years, and the disengagements from the French interest, to the two houses differing from the sense and opinion of Whitehall. So, at this time, the thing in the world this nation hath most reason to apprehend is a gene-

A.D. 1675. ral peace, which cannot now happen without very advantageous terms to the French, and disadvantageous to the house of Austria.

“ We are the king’s great counsellors ; and, if so, have a right to differ, and give contrary counsels to those few that are nearest about him. I fear they would advance a general peace. I am sure, I would advise against it, and hinder it, at this time, by all the ways imaginable. I heartily wish nothing from you may add weight and reputation to those counsels that would assist the French. No money for ships, nor preparations you can make, nor personal assurances our prince can have, can secure us from the French if they are at leisure.

“ The French king is grown the most potent of us all at sea : he has built twenty-four ships this last year, and has thirty more than we ; besides the advantage, that our ships are all out of order, and his so exquisitely provided for that every ship has its particular storehouse. It is incredible the money he hath, and what he has laid out in making of harbours. He makes even nature itself give way to the vastness of his expense : and, after all this, shall a prince so wise, so intent upon his affairs, be thought to make all these pre-

parations to sail over land, and fall on the back A.D. 1675.
of Hungary, and batter the walls of Kaminietz ?
or, is it possible he should oversee his interest in
seizing of Ireland, a thing so feasible to him, if
he be master of the seas, as he certainly now is ;
and which, when attained, gives him all the
southern Mediterranean, East and West India
trade, and renders him, both by situation and ex-
cellent harbours, perpetual master of the seas
without dispute.

“ My lords, to conclude this point, I fear the
court of England is greatly mistaken in it : and I
do not wish it the reputation of the concurrence
of the kingdom ; and this out of the most sincere
loyalty to his majesty and love to my nation.

“ My lords, I have but one thing more to
trouble you with, and that, perhaps, is a consider-
ation of the greatest weight and concern both to
your lordships and the whole nation. I have
often seen in this house, that the arguments with
strongest reason, and most convincing to the lay
lords in general, have not had the same effect
upon the bishops’ bench ; but that they have un-
animously gone against us in matters that many
of us have thought essential and undoubted rights ;
and I consider, that it is not possible that men of

A.D. 1675. great learning, piety, and reason, as their lordships are, should not have the same care of doing right, and the same conviction what is right, upon clear reason offered, that your other lordships have. And, therefore, my lords, I must necessarily think we differ in principles; and then it is very easy to apprehend, what is the clearest sense to men of my principle, may not at all persuade or affect the conscience of the best man of a different one. My principle is, 'that the king is king by law, and by the same law that the poor man enjoys his cottage;' and so it becomes the concern of every man in England that has but his liberty, to maintain and defend, to his utmost, the king in all his rights and prerogatives. My principle is also, 'that the lords' house, and the judicature and rights belonging to it, are an essential part of the government,' and established by the same law. The king, governing and administering justice by his house of lords, and advising with both his houses of parliament in all important matters, is the government I own, I was born under, and am obliged to. If ever there should happen in future ages, (which God forbid!) a king governing by an army without his parliament, it is a government I own not, am not obliged to, nor was born under.

“According to this principle, every honest man A.D. 1675.
that holds it must endeavour equally to preserve
the frame of the government in all the parts of
it; and cannot satisfy his conscience to give up
the lords’ house for the service of the crown, or to
take away the just rights and privileges of the
house of commons to please the lords.

“But there is another principle got into the
world, my lords, that hath not been long there,
for Archbishop Laud was the first author that I
remember of it; and I cannot find that the je-
suits, or, indeed, the popish clergy, have ever
owned it, but only some of the episcopal clergy
of our British isles; and it is withal, as it is new,
so the most dangerous, destructive doctrine to our
government and law that ever was: it is the first
of the canons published by the convocation 1640,
‘that monarchy is of divine right.’ This doctrine
was then preached up and maintained by Sibthorp,
Manwaring, and others; and, of late years, by a
book published by Dr. Sanderson, Bishop of Lin-
coln, under the name of Archbishop Usher: and
how it is spread amongst our dignified clergy is
very easily known.

“We all agree, that ‘the king and his govern-
ment is to be obeyed for conscience sake;’ and

A.D. 1675. that the divine precepts require, not only here, but in all parts of the world, ‘obedience to lawful governors:’ but that ‘this family are our kings, and this particular frame of government is our lawful constitution and obliges us,’ is owing wholly to the particular laws of our country.

“This Laudean doctrine was the root that produced the bill of test last session; and some very perplexed oaths, that are of the same nature with that, and imposed by several acts, this parliament.

“In a word, if this doctrine be true, our Magna Charta is of no use; our laws are but rules among ourselves during the king’s pleasure. Monarchy, if of divine right, cannot be bounded or limited by human laws; nay, what is more, cannot bind itself; and all our claims of right by the law or constitution of the government, all the jurisdiction and privilege of this house, all the rights and privileges of the house of commons, all the properties and liberties of the people, are to give way, not only to the interest, but the will and pleasure of the crown; and the best and worthiest of men, holding this principle, must vote to deliver up all we have, not only when reason of state and the separate interest of the crown require it, but when the will and pleasure

of the king is known to have it so ; for that must A.D. 1675.
be, to a man of that principle, the only rule and
measure of right and justice. Therefore, my lords,
you see how necessary it is that our principles be
known, and how fatal to us all it is that this
principle should be suffered to spread any further.

“ My lords, to conclude : your lordships have
seen of what consequence this matter is to you ;
and that the appointing a day to consider, is no
less than declaring yourselves doubtful, upon
second and deliberate thoughts : that you put
yourselves out of your own hands into a more
than moral probability of having this session
made a precedent against you. You see your
duty to yourselves and the people ; and that it is
not really the interest of the house of commons,
but may be the inclination of the court, that you
lose the power of appeals. But I beg our house
may not be *felo de se* ; but that your lordships
would take, in this affair, the only course to pre-
serve yourselves ; and appoint a day, this day
three weeks, for the hearing Dr. Shirley’s cause ;
which is my humble motion.”

Lord Shaftesbury’s jealousy of the rising great-
ness of France appeared on every occasion, but in

A.D. 1675. this speech it is very remarkable; as are likewise his apprehensions lest such a peace should be made as would be favourable to the ambitious views of France. By the intrigues of the French court, and the folly and influence of ours, a treaty of this kind was, about two years afterwards, actually concluded at Nimeguen; a treaty by which France was confirmed in her conquests and her power, and the alliance against her was broken to pieces.

Lord Shaftesbury's fear of such a peace, and his early and open declaration of it, is a strong evidence that his censures of the treaty after its conclusion did not proceed from a mere disposition to find fault with the conduct of affairs, but from the wisdom of his political views.

Dispute between the two houses continued.

As the court was secure of a majority in the house of commons, and was sanguine in its expectations from the present session, the utmost efforts were used to evade a revival of the dispute. But Lord Shaftesbury so prevailed with the peers to maintain their judicature, that, after several days' debate, they appointed the 20th of November for hearing the cause. The commons were again inflamed at this, and insisted on their privileges; and none were more earnest among them than

Lord Shaftesbury's friends. When, therefore, the contention between the two houses was raised to a proper height, an address was proposed in the house of lords for a dissolution of the parliament.

A.D. 1675.

Motion for an address to dissolve the parliament.

This was strongly debated, and Lord Shaftesbury exerted his usual vigour and eloquence. He represented the great inconvenience of long parliaments; that such a continuance of them as had taken place with regard to the present parliament was an alteration of the constitution; that it drew the members off from the public interest, and rendered them more liable to be corrupted. He represented, likewise, that the privilege which the members and those protected by them had, of being exempted from arrests, was, in a parliament of long duration, a great pressure upon the people.

Many other arguments were delivered by Lord Shaftesbury and some of the peers; but the court, which had been at such an expense to secure a number of friends in the house of commons, was unwilling to lose the benefit of its purchase: it tried therefore its whole strength, and carried the question, by two voices only, against the dissolution.*

Carried in the negative.

* It is remarkable that the Duke of York, and several of his friends, concurred with the patriotic lords, though from

A.D. 1675.

Protest of
several lords.

This was immediately followed by a protest, drawn up by Lord Shaftesbury, and signed by him and above twenty other peers; in which they set forth, "That it was according to the ancient laws and statutes of the realm, that there should be frequent new parliaments; that it was not reasonable that any particular number of men should, for so many years, engross so great a trust of the people as to be their representatives in the house of commons; nor was it advantageous to the government; the mutual correspondence and interest of those who choose and are chosen admitting of great variations in length of time: and that the long continuance of any such as are intrusted for others, and who have so great a power over the purse of the nation, must naturally endanger the producing of factions and parties, and the carrying on of particular interests and designs, rather than the public good."

Parliament
prorogued
for fifteen
months.

This spirit in the house of lords, and the contentions between the two houses, obliged the

very different principles, in supporting the address for a dissolution of parliament. The Duke of York considered the commons as not sufficiently favourable to the cause of

popery; while the patriotic lords knew that great numbers of them were too ready to comply with the arbitrary designs of the court.

court to prorogue the parliament two days after, A.D. 1675.
on the 22nd of November 1675, to the 15th of
February 1676-7, which was fifteen months; a
prorogation without a precedent.

During this prorogation, and towards the ap-
proach of the next session, a book came out by
authority, intituled, "A Packet of Advice to the
Men of Shaftesbury."* But, as we are informed
in the Account of the Growth of Popery,¹¹¹ "the
name of the author was concealed, not out of any
modesty, but that he might with more security
exercise his impudence, not so much against some
noble lords, as against all public truth and ho-
nesty; nor did the book deserve naming no more
than the author, but that they should rot together
in their own infamy, had not the first events of
the following session made it remarkable that the
wizard dealt with some superior intelligence."

Pamphlet
against Lord
Shaftesbury.

* See the Account of the Growth of Popery.¹¹⁰

¹¹⁰ It must, however, be remembered that Andrew Marvell's Account of the Growth of Popery is quite as vehement a party production as the pamphlet upon which it passes sentence.

¹¹¹ There are two pamphlets bearing this title, by the same author. The first, printed in the year 1676, purports to be an answer to the "Letter from a Person of Quality;" but it also abuses Lord Shaftesbury's speech, and his letter to the Earl of Carlisle.

A.D. 1675.

The whole force of this pamphlet, as may be judged by the title, was turned against Lord Shaftesbury. To him was imputed the great opposition to the bill for enjoining the oath above mentioned; the division between the two houses, in order to defeat it; the debate for the address to the king to dissolve the parliament; and, indeed, every obstacle which was thrown in the way of the court. He was called a fairy fiend that haunted both houses; and was made the principal, if not the sole, mover of all that spirit which appeared in the parliament and the nation.

The good or bad designs of the court, and the tendency of its measures, must render this charge either an honour or a disgrace to Lord Shaftesbury. That the intentions of the junto were pernicious, their counsels and their conduct very corrupt, appeared evidently at that time to the public, and hath ever since been allowed by all unprejudiced persons.

The capacity which Lord Shaftesbury had discovered in countermining the schemes of the court, and the boldness with which he laid them open to the nation, so irritated the junto, that a resolution had been formed to lay hold on the

first opportunity of securing or removing him; A.D. 1675.
 and such an opportunity was afforded by the debate that arose concerning the long prorogation of the houses.

This prorogation was thought so dangerous to the constitution, that, before the opening of the session, it was become an object of general censure. When the parliament met, on the 15th of February 1676-7, the Duke of Buckingham, who had lately joined the country lords, endeavoured to prove that the last prorogation of the parliament was null and void in law. He maintained, likewise, in his speech, that the parliament was dissolved; and grounded his opinion upon the ancient and unquestionable statutes of the realm. He urged particularly, that, in the 4th of Edward the Third, cap. 14, "It is accorded that a parliament shall be holden every year once, and more often if need be;" and that, in the 36th of the same king, in the act of parliament relating to Magna Charta, and other statutes, were these words: "Item, For maintenance of these articles and statutes, and the redress of divers mischiefs and grievances which daily happen, a parliament shall be holden every year, as at other times was ordained by another statute." The duke asserted,

A.D.
1676-7.
Meeting of
parliament.

Debate
whether it
was dis-
solved by
the last pro-
rogation.

A. D.
1676-7.

that, as this prerogation had put off the parliament to a day beyond the year, the doing of which was excepted against by law, the parliament ought consequently to be dissolved. He desired that the judges, as was usual, might give their opinions upon the matter; and concluded with moving for an address to the king, that, for his own sake as well as the people's, he would speedily call a new parliament.¹¹²

On the other side, it was moved by Lord Frecheville that the duke might be called to the bar, which was opposed, as an extravagant motion, by Lord Salisbury, who supported the duke's

¹¹² The Duke of Buckingham threw his argument into a syllogism: "It is a maxim in the law of England, that the Kings of England are bound up by all the statutes made *pro bono publico*; that every order or direction of theirs contrary to the scope and full intent of any such statute is void and null in law: but the last prorogation of the parliament was an order of the king's contrary to an act of King Edward the Third, made for the greatest common good, viz. the maintenance of all the statutes of England, and for the prevention of the mischiefs and grievances which daily happen: ergo, the last prorogation of parliament is null and void in law." The duke appealed to the bishops whether this was not a true syllogism, and to the judges whether the propositions were not true in law? But it requires no great acuteness to discover, that, although the syllogism is correct in form, there is a manifest *petitio principii* involved in the minor premiss.

proposal with great courage and reason. However, another courtier, "Lord Arundel of Trerice, a man of no less consideration and authority than Lord Frecheville, renewed the motion for calling the duke to the bar: but there were yet too many lords between; and the couriers of the house of commons brought up advice every moment that the matter was yet in agitation among them; so that the Earl of Shaftesbury had opportunity to appear with such extraordinary vigour, both in what concerned the Duke of Buckingham's person and his proposal, that, the Earl of Shaftesbury appeared more properly another principal than the Duke of Buckingham's second. Thus, for five or six hours, it grew a fixed debate, till the expected news came that the commons were risen without doing anything; whereupon the greater number called for the question, and had it in the affirmative that the debate upon the duke's question should be laid aside.

"Being thus flushed, but not satisfied, with their victory, the courtiers fell upon their adversaries in cool blood; questioning such as they thought fit that night, and, the morrow after, sentencing them, viz. the Duke of Buckingham, the Earl of Salisbury, the Earl of Shaftesbury,

A.D.
1676-7.

A. D.
1676-7.

and the Lord Wharton, to be committed to the Tower, under the notion of contempt, during his majesty's and the house's pleasure. That contempt was their refusing to recant their opinion, and ask pardon of the king and the house of lords. Thus a prorogation without precedent was to be warranted by an imprisonment without example."*

Proceed-
ings against
Lord Shaf-
tesbury and
other lords.

When the debate was resumed, the three last lords, having spoken in their own defence, were ordered to withdraw; as was likewise the Duke of Buckingham, who took that opportunity to go out of the way, and so was not sentenced to the Tower the same day with the rest. The house then made a distinction between the offence of Lord Shaftesbury, and the offence of Lord Salisbury and Lord Wharton, or rather between their persons. It was allowed that the two last had not asserted that the parliament was dissolved, but only that the prorogation was illegal; and therefore it was ordered that they should be called to their places and reprehended there by the lord chancellor, and should be required to ask pardon of the king and the house: but Lord Shaftesbury was not to be so mildly

* Account of the Growth of Popery.

treated. The courtiers carried the question that he should be brought to the bar, and make his acknowledgment upon his knees in these words, viz. "I do acknowledge that my endeavouring to maintain that this parliament is dissolved was an ill-advised action; for which I humbly beg pardon of the king's majesty and of this most honourable house."¹¹³

A. D.
1676-7.

Lord Shaftesbury refused, however, to own himself guilty of the charge, and to make the acknowledgment required; and therefore he was the first who, as a delinquent, was sentenced to be committed to the Tower during the pleasure of the king and the house. The Earl of Salisbury and Lord Wharton had too much honour and resolution to forsake him. They would not accept of the indulgence in the distinction which was made between them. They refused to ask pardon, and were upon that ordered to be

They are
committed
to the
Tower.

¹¹³ It appears from the State Tracts, temp. Car. II. that Lord Shaftesbury wrote two pamphlets upon this occasion: the one called "The Debate, or Arguments for dissolving this present parliament, and the calling frequent and new Parliaments, as they were delivered in the House of Lords, Nov. 20, 1675;"—the contents of this pamphlet do not by any means justify its title:—the other, under the well-worn name of "A Letter from a Parliament-man to a Friend in the Country."

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committed to the Tower. The Duke of Buckingham, who did not deny the charge of having asserted that the parliament was dissolved, surrendered himself the next day, and was committed likewise to the same place.

They are
committed
to the
Tower,
and
therefore
he
was
sentenced
to be
committed
to the
Tower
during
the
plea.

CHAPTER V.

Popularity of the imprisoned Lords.—Lord Shaftesbury's application to the King's Bench.—His speech to the Court.—His application is refused.—His three Letters.—Petitions the King and the House of Lords.—Makes his submission, and is released.—Subsequent resolution of the Lords.

WHEN the lords were first committed, great numbers went to visit them, which so provoked the court party, that the next day an order was made that they should be kept separate, and not suffered to meet together; and that no persons should be permitted to see them without leave of the house. But this had not the effect desired; for it produced daily applications from many of the peers, and other persons of distinction, for leave to visit them.

The house of lords, being under the influence of the court, showed its severity against several books which had been published in order to prove the dissolution. One of these was written by Lord Holles, and was called "The Grand Ques-

A. D.
1676-7.

Order concerning the imprisoned lords.

Books condemned by the house of lords.

A. D.
1676-7.

tion, concerning the Prorogation of the Parliament for a year and three months, stated and discussed." It was corrected from the press by Dr. Nicholas Carey, who, refusing, at his examination before the house of lords, to discover his knowledge of the author, was fined in the sum of one thousand pounds, and ordered to be kept a prisoner in the Tower till it was paid.

A. D. 1677.
The two
houses ad-
journed.

Upon the 16th of April, the two houses, by direction from the king, adjourned themselves to the 21st of May, and then to the 16th of July.

The views
of the court
in the ad-
journments.

The views of the court in these adjournments, for which there was not the least pretence of public business, were very evident; for the four lords might have claimed a right to their discharge upon a prorogation, being committed during the pleasure of the king and the house. The power over them during the recess centred in the king. This method of committing a number of members to prison for delivering their opinions in parliament, and of giving the crown a power to release or continue them in confinement, had a most dangerous tendency. It was opening a way for the king (being sure of a majority) to invade, at any time, the privileges of parliament, to terrify and punish such members as he disliked, and to weaken

thereby every opposition to his measures. It was A.D. 1677. doing likewise, under a parliamentary sanction, which must have a worse effect, what Charles the First had done by violence.

Lord Shaftesbury singly stood in the breach on this occasion. He resolved to assert the liberty of the subject in an open regular way; in a way which, he was assured, must draw the attention of the public. If the king had a power to release him, he thought an application to him more proper in his court of justice than in the cabinet. He took, therefore, the usual method, which every subject has a right to, for obtaining his liberty. Having very sufficient bail ready to offer, he petitioned the court of the king's bench for an habeas corpus; and upon the return of it, directed to the constable of the Tower, he was brought up to the bar, on Wednesday, June the 27th, 1677; but, there being a dispute about the sufficiency of the return, the Friday following was appointed by the judges to take it into consideration.

Lord Shaftesbury's application to the king's bench.

When the case was argued, his counsel gave many reasons why he ought to be bailed; but the attorney and solicitor general insisted that the court could not relieve any person committed by either house of parliament.

A.D. 1677. Upon this, Lord Shaftesbury readily answered their objections in the following speech, the substance of which only is preserved; but, from the inaccuracy in taking it down, its elegance is probably in a great measure destroyed.

His speech
in the king's
bench court.

“MY LORD,
“I did not intend to have spoken one word in this business; but what hath been objected and laid to my charge by the king's counsel, Mr. Attorney and Mr. Solicitor, inforces me to say something for your better satisfaction. They have told you that my counsel in their arguments said that this court was greater than the house of peers; I dare appeal to your lordship, and the whole court, that it was never spoken by them: I am sure it was not by any direction of mine. What is said by my counsel and me is, that this court is the most proper place to resort unto in those cases where the liberty of the subject is concerned. The lords' house is the supreme court of judicature in the kingdom; but yet there is a jurisdiction which the lords' house do not meddle with.

“The king's counsel mentioned it as a wonder that a member of the lords' house should come

hither to diminish the jurisdiction of the lords. I A.D. 1677.
acknowledge them to be superior to this or any
other court, to whom all appeals and writs of
error are brought; and yet there are jurisdictions
they do not challenge, and which are not natural
to them or proper for them. They claim not to
meddle in original cases; and so I might mention
in other things: and I do not think it a kindness
to any person or body of men, to give them a
power or jurisdiction which is not natural or
proper to their constitution. I do not think it
would be any kindness to the lords to make them
absolute and above the law; as I do humbly con-
ceive this must do, if it be adjudged that they, by
a general warrant, or without any particular cause
assigned, do commit me or any man to a per-
petual and indefinite imprisonment: and, my lord,
I am not so inconsiderable a person but what you
do in my case must be law for every man in
England.

“ Mr. Attorney is pleased to say I am a mem-
ber of the lords’ house, and to lay weight on the
word member. It is true I am one of them, and
no man hath a greater reverence and esteem for
the lords than myself: but I hope, by being a
peer or member of either house, I shall not lose

A.D. 1677. the privilege of an Englishman, or have the less title to Magna Charta or the other laws of English liberty.

“My opinion is not, with one of my counsel, (who argued very learnedly,) that the passing an act by the king’s royal assent cannot make a session, because the usual promise was not in it. It was without any instruction of mine that he mentioned that point.

“The king’s counsel tell your lordship of the laws and customs of parliament; and if this was so, I should submit: but this case of mine is *primæ impressionis*, and is a new way, such as neither Mr. Attorney nor Mr. Solicitor can show any precedent of; and I have no other remedy or place to apply myself to than the way I take.

“Mr. Attorney confesseth, that the king’s pleasure may release me without the lords. If so, this court is *coram rege*; this is the proper place to determine the king’s pleasure. This court will, and ought to judge an act of parliament null and void if it be against Magna Charta; much more may it judge an order of the house, that is put in execution to deprive any subject of his liberty: and if this order or commitment be a judgment,

as the king's counsel affirm, then it is out of the A.D. 1677. lords' hands, and properly before your lordship, as much as the acts which were lately passed, which, I presume, you will not refuse to judge of, notwithstanding Mr. Attorney-General saith that this parliament is still in being. I take it something ill that he tells me I might have applied elsewhere.

“My lord, I have not omitted what became my duty to the king: for, besides the oath of allegiance I took as a peer or an Englishman, there is something in my breast that will never suffer me to depart from the duty and respect I owe him. I am here before him: he is always supposed to be here present, and he alloweth his subjects the law.

“My lord, they speak much of the custom of parliament: but I do affirm there is no custom of parliament that ever their own members were put out of their own power; and the inconveniences of it will be endless.

“Mr. Attorney was pleased easily to answer the objection of one of my counsel: if a great minister be so committed, he hath the cure of a pardon, a prorogation, or a dissolution. But if the case should be put, why forty members, or a

A.D. 1677. greater number, may not as well be taken away without remedy in any of the king's courts, he will not so easily answer; and if there can be no relief in this case, no man can foresee what will be hereafter.

“ I desire your lordship will consider what rule you make in my case; for it will be a precedent that may, in future ages, concern every man in England.

“ My lord, Mr. Attorney saith you must either release or remand me. I differ from him in that opinion: I do not insist upon a release. I have been a prisoner above five months already, and came hither of necessity, having no other way to get my liberty; and, therefore, am very willing to tender your lordship bail, which are in or near the court, as good as any are in England either for their estates or quality; and I am ready to give any sum or number.

The opi-
nions of the
judges.

“ My lord, this court being now possessed of the business, I am your prisoner.”

Three of the judges gave their opinions that Lord Shaftesbury could not be relieved by that court; and though the fourth (Judge Twisden) was not present at the hearing, he had, before the court sat, desired Sir Thomas Jones to deliver his, likewise, against the discharge.

When the lords in the Tower saw the issue of this application to the king's bench, and that no other door would be opened for their liberty, they petitioned the king for their release. He readily granted the petition of the Duke of Buckingham,¹¹⁴ (who had been principal in the offence, if there was any,) the Earl of Salisbury, and the Lord Wharton; but Lord Shaftesbury was distinguished from the rest. He was continued in confinement, and kept under a severe restraint. To add farther to his mortification, there was another long and unprecedented adjournment, from the 16th of July to the 3rd of December; another from this day to the 15th of January; and then to the 28th.

A.D. 1677.

The other lords released upon petition.

Lord Shaftesbury still detained.

During these adjournments, no person could gain admittance to Lord Shaftesbury without a particular order from the king, who referred every one that asked to his brother the Duke of York. By this means Lord Shaftesbury's confinement was rendered as strict as possible; which, as he was not committed for high treason, was an

Severe treatment of him.

¹¹⁴ Upon their committal, Buckingham and Shaftesbury had requested that they might be attended by their own servants, and the first whom they chose were their cooks. This indirect accusation of an intent to poison them highly enraged Charles.

A.D. 1677. unnecessary act of cruelty; a weakness in any prince to show.

Lord Shaftesbury's close confinement was the greater hardship upon him, as he was labouring under an infirm constitution, which was owing to the accident that he had met with in the king's service at Breda. However, this deviation from the common forms of government and the customs of parliament, with no other view than to distress him and to subdue his spirit, as it was a proof of the court's resentment against him, was a proof, likewise, of its fear of him, and tended to raise his character with the public.

Three letters written by Lord Shaftesbury.

Lord Shaftesbury, finding the ministry determined not to discharge him, and the court of justice as resolved not to bail him, wrote those letters which are in Mr. Locke's Memoirs, and which give a true idea of the greatness of his spirit.

In his letter to the king, he expostulates with a becoming freedom, yet respect, upon his former services and the disinterestedness of them: that, in his conduct for effecting the Restoration, he had never betrayed the counsels of any person, had never held any secret correspondence with the king, nor ever made any private terms for

himself. If this assertion had been a falsehood, A.D. 1677. he could never have made such an appeal to the king, who was then incensed against him, and would certainly have discovered the untruth to expose him to the world. It is a great misfortune that the letter is imperfect;* for it ends abruptly, in the midst of a relation of facts, which would probably have set his conduct, both before and after the Restoration, in a fuller and clearer light.

His letter to the Duke of York contains no servile submission, and is a plain confirmation that he had never been in the duke's interest, which was so closely united with that of the French.

TO KING CHARLES THE SECOND.

SIR,

“THE Almighty God, the King of kings, permitted Job to dispute with him, and to order his cause before him: give me leave, therefore, great sir, to lay my case before your majesty, and to plead not only my innocence, but my merits towards your majesty; for ‘my integrity will I

To the King.

* In Mr. Locke's written copy of this letter, it breaks off at the end of a sheet, by which it may be presumed Mr. Locke had lost the remainder.

A.D. 1677. hold fast, and will not let it go: my heart shall not reproach me so long as I live.'

"I had the honour to have a principal hand in your restoration; neither did I act in it but on a principle of piety and honour. I never betrayed (as your majesty knows) the party or counsels I was of. I kept no correspondence with, I made no secret addresses to, your majesty; neither did I endeavour or obtain any private terms or articles for myself, or reward for what I had done or should do. In whatever I did towards the service of your majesty, I was solely acted by the sense of that duty I owed to God, the English nation, and your majesty's just right and title. I saw the hand of Providence, that had led us through various forms of government, and had given power into the hands of several sorts of men; but He had given none of them a heart to use it as they should. They all fell to the prey, sought not the good or settlement of the nation, endeavoured only the enlargement and continuance of their own authority, and grasped at those very powers they had complained of so much, and for which so bloody and so fatal a war had been raised and continued in the bowels of the nation. I observed the leaders of the great par-

ties of religion, both laity and clergy, ready and A.D. 1677.
forward to deliver up the rights and liberties of
the people, and to introduce an absolute domi-
nion ; so that tyranny might be established in the
hands of those that favoured their way, and with
whom they might have hopes to divide the pre-
sent spoil ; having no eye to posterity, or thought
of future things. One of the last scenes of this
confusion was General Lambert's seizing of the
government in a morning by force of arms, turn-
ing out the parliament and their council of state,
and in their room erecting a committee of safety.
The news of this gives a great surprise to Gene-
ral Monk, who commanded the army in Scotland.

* * * *

TO THE DUKE OF YORK.

“ SIR,

“ I humbly confess I never thought my person
or my principles acceptable to your royal high-
ness ; but, at that juncture of time and occasion
when I was committed, I had no reason to expect
you should be my severe enemy. Reputation is
the greatest concern of great dealers in the world ;
great princes are the greatest dealers ; no reputa-
tion more their interest than to be thought mer-
ciful, relievers of the distressed, and maintainers

To the
Duke of
York.

A.D. 1677. of the ancient laws and rights of their country :
this I ever wish may attend your royal highness,
and that I may be one instance of it."

TO THE LORD ———

To Lord —

" MY LORD,

" I had prepared this for your meeting in December; but that being adjourned to the 3rd of April,* an age to an old infirm man, especially shut up in a winter's prison, forgive me if I say you owe yourself and your posterity, as well as me, the endeavouring to remove so severe a precedent on one of your members; such as I may truly say is the first of the kind, and I pray heartily may be the last. Your intercession to his majesty, if it be general, is not likely to be refused; if you are single, yet you will have done honourably, and what I should have done for you."

Lord Shaftesbury petitions the house of lords.

When Lord Shaftesbury perceived that his letters were entirely disregarded, and that the

* Mr. Locke must have made a mistake in transcribing this letter, the parliament having been adjourned only from December to January; unless it is to be supposed that Lord Shaftesbury, by the closeness of his confinement, was ignorant of the times of adjournment.

king was more pleased with his present confinement than mindful of his former services : when he found the lords, at the meeting of parliament, but little solicitous about his liberty : when he saw that the public affairs were in a dangerous situation ; that the opposition in parliament was cool and inactive ; that the papists were become more bold and open in their proceedings ; that a great army was in the kingdom ; that the king and the Duke of York were pushing on their schemes of arbitrary power with more resolution than formerly ; and that, by their interposition, the Dutch were drawing off from the general alliance against France ; he became more earnest for his liberty ; and, on the 14th of February 1677-8, sent a petition to the house of lords, wherein he took notice of his having presented one to the king. But the junto, still desirous to keep him out of the way, procured, after a debate, that his petition to the house should be rejected, because in that to the king he had not made such an acknowledgment as they required.

A.D. 1677.

A. D.
1677-8.

Lord Shaftesbury was now as determined to obtain his liberty as the court was to debar him from it ; and in order to remove the least shadow of an obstacle, he sent another petition to the

He again petitions the king and the house of lords.

A. D.
1677-8.

king, and likewise to the house of lords, in which he made the acknowledgment which had before been required. As the former reasons, therefore, for detaining him no longer subsisted, the ministry had recourse to others. New difficulties were thrown in his way; his application to the king's bench was improved into a crime, and aggravated as an indignity to the king and the house of peers.

When his petition was debated, and the lords seemed inclined to release him, the lord chancellor, with a view to irritate them against him, acquainted them "that the king had received a third petition* from Lord Shaftesbury; but, understanding that he had endeavoured to free himself from their censure by appealing to the king's bench during the late adjournments, he did not think fit to signify his pleasure until the house had taken that matter into consideration."

Debate on
his having
appealed to
the king's
bench.

Upon this, the lords ordered the records of the court of king's bench, relating to the habeas corpus, to be laid before them; and afterwards

* As the lord chancellor mentions this as the third petition presented to the king, it is probable that Lord Shaftesbury had petitioned for his liberty in conjunction with the other lords, though not with the same success.

entered into a debate concerning Lord Shaftesbury's appeal.

A. D.
1677-8.

In this debate, all the peers who were not closely attached to the court, or under its influence, exerted themselves for Lord Shaftesbury and the liberty of the subject, which was violated in so open a manner by his long and unreasonable confinement. Lord Halifax, in particular, acted with great zeal; and those who could not attend ordered their proxies to be given in Lord Shaftesbury's favour. Among others, the worthy Earl of Salisbury* was careful to secure him his proxy, of which he sent him notice in the following letter:

"Feb. 20, 1677-8.

"MY LORD,

"If I had known your intention to petition the house, I would have stayed in town, to have done you what service I could. I have signed and sealed the inclosed, with a design my Lord Halifax should have it, though I never gave my

* This Lord Salisbury died a few years after; and his death was principally attributed to his great concern for his country, and to the melancholy situation of affairs: for Dr. Lower told a friend of his lordship's (who was solicitous for his recovery) that he could easily cure my lord's illness if he could but cure him of thinking so much of the public.

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1677-8.

proxy before. I shall be extremely glad to hear you have a happy success in this business; being really,

My Lord,

“Your faithful humble servant,

“SALISBURY.”

Vote of the
lords con-
cerning it.

After the debate, which continued two days, the ministry prevailed; and the lords came to a resolution, “That it was a breach of privilege of that house for any lord committed by them to bring an habeas corpus in an inferior court to free himself from imprisonment during the session of parliament.”

Lord
Shaftesbury
presents a
further pe-
tition to the
lords.

Lord Shaftesbury, upon this order, was strenuous to assert his privilege as a peer, and his liberty as an Englishman; and, therefore, presented another petition to the house, in which he claimed it as his undoubted right to be present, and to speak for himself upon a debate on any new matter. As the lords could not refuse this, they came to a resolution that Lord Shaftesbury should be permitted to make his defence.

He is
brought be-
fore them.

Accordingly, they appointed the constable of the Tower to bring Lord Shaftesbury to their bar on the 22nd of February; when the lord chancellor acquainted him with their resolution

concerning his application to the court of king's bench ; upon which, in a short speech, he made his submission. This submission was, however, regarded as too general ; though he said, " No one was more tender of their privileges, and that he should never have applied for an habeas corpus if he had thought it any breach of them : and though there might be a probability of his having erred for want of a precedent to guide him, and by being deprived the benefit of counsel by reason of his close confinement, yet he resolved not to persist in anything that might offend the king or the house."

A.D.
1677-8.

Though the ministry were not, or pretended not to be, satisfied with his submission, it would have been too glaring an act of power to have continued his imprisonment under the old pretences ; and therefore another attempt was made to keep up the resentment of the lords. Lord Treasurer Danby acquainted them, " that he had received a paper from one Blaney, giving an account of some words spoken by Lord Shaftesbury in the court of king's bench, which deserved their cognizance." But he could not fix the charge ; nor could Blaney, when he was called in and examined, swear to the words.

A.D.
1677-8.

He makes
his submission.

This disappointment, as it ended in the confusion of the treasurer, tended to open the eyes of the peers, and to convince them of the hardships which they had imposed on one of their own body. They came immediately to a resolution in what form Lord Shaftesbury should make his acknowledgment; which being drawn up and read to him, he thought proper to acquiesce in it, and to submit to the house in the terms it had prescribed.¹¹⁵

It was then ordered that the lords with the white staves should wait upon the king, and acquaint him that the peers had received satisfaction from the Earl of Shaftesbury in the matter of the habeas corpus and the other contempt for which he stood committed; and that they became humble suitors to his majesty that he would be pleased to discharge him from his

¹¹⁵ The submission was sufficiently humiliating. It ran thus: "I do acknowledge that my endeavouring to maintain that the parliament is dissolved, was an ill-advised action, for which I humbly beg the pardon of the king's majesty and of this most honourable house; and I do also acknowledge that my bringing of an habeas corpus in the king's bench during this session, was a high violation of your lordships' privileges, and a great aggravation of my former offence, for which I likewise most humbly beg the pardon of this most honourable house."

imprisonment. The king's answer to their application was, that he would give orders accordingly.

A. D.
1677-8.

and is released.

This transaction, in the whole progress of it, was a most oppressive act of power; and, as it plainly evinced the violent temper of the court on one side, it showed, on the other side, the servile disposition of the members of the upper house, who could sacrifice the common liberty, and their particular privileges as peers, to the resentments of a tyrannical administration. The lords themselves afterwards manifested the same sense of this transaction, and justified the Earl of Shaftesbury's conduct in the following remarkable resolution, which they came to in a full house of above ninety lords.

Reflections
on this
transaction.

“ Die Sabbati, 13 Novembris 1680.

“ Whereas the Duke of Buckingham, the Earls of Salisbury and Shaftesbury, and Lord Wharton, were, contrary to the freedom of parliament, committed to prison by order of the lords' house of the 15th of February 1676-7, whereupon followed a series of many unprecedented proceedings, derogatory to the authority of parliament, and of evil example and precedent to posterity: for

Remark-
able subse-
quent reso-
lution of the
house of
lords.

A. D.
1677-8.

vacating, making void, and destroying such precedents for ever, and in vindication of the authority and freedom of parliament; upon complaint thereof made, and due consideration and debate thereof by the lords spiritual and temporal in parliament assembled, it is ordered, decreed, and adjudged, that the said order and proceedings concerning the said lords were unparliamentary from the beginning, and in the whole progress thereof; and therefore, are all ordered to be vacated (by virtue of this judgment) in the journal books of this house; that the same, or any of them, may never be drawn into precedent for the future."

CHAPTER VI.

Influence of Shaftesbury with the popular Party. — He obtains an Address for a War with France from the Commons. — It is lost in the Lords. — The Popish Plot. — Lord Shaftesbury's conduct in this affair. — Remarks on Bishop Burnet's account. — Sir W. Jones's opinion upon the Evidence. — Exclusion Bill projected. — Parliament dissolved. — Lord Shaftesbury's Speech at the assembling of the new Parliament. — Scheme for a new Council. — Shaftesbury made President. — Remarks upon Sir W. Jones's observations respecting Shaftesbury.

LORD SHAFTESBURY'S long imprisonment on so trifling an occasion, the injustice of it in the beginning, and the severity of it afterwards, convinced the nation of the enmity of the court towards him. His conduct gained for him a great accession of popularity; the visits which he received from the nobility and gentry, and the general joy that appeared on his enlargement, showed the esteem in which he was held by the public.

The progress of popery was now more clearly discerned than it had formerly been; the jealousy which the people had of the court was increased;

A. D.
1677-8.

General
joy on Lord
Shaftes-
bury's re-
lease.

A. D.
1677-8.

His senti-
ments con-
cerning a
peace with
France.

and, therefore, their eyes and their attention were naturally turned upon Lord Shaftesbury, who had been the spirit of the opposition, and by that means had become the terror of the French and popish party. All the leaders of the country interest resolved, on his obtaining his liberty, to consult with and to take their measures again from him. He had before declared, in parliament, his apprehensions that a peace, which would be favourable to the views and interest of France, might be formed at that juncture; and these apprehensions were confirmed by the measures which had been taken during his confinement. An army had been raised, and forces were sending into Flanders, under the command of the Duke of Monmouth, for the preservation, as was pretended, of that country; but Lord Shaftesbury knew that the English court could not be sincere in this measure. He foresaw that these forces would raise a jealousy in the States, of their not being designed to protect them against the French, but to support the Prince of Orange in his claim to the stadtholdership, the increase of whose power was greatly dreaded by the principal persons in the republic; nor was their fear of him a little

strengthened by the alliance into which he had lately entered with King Charles.

A. D.
1677-8.

Lord Shaftesbury was justly afraid that the States General, to secure themselves against the prince, would be prevailed upon to make a separate peace almost upon any terms; and he well knew that such a separate peace must produce a general one, by which the alliance would be dissolved, France remain in possession of her conquests, and the English court be at greater liberty to pursue its schemes in favour of popery and arbitrary power. He thought, however, that a vigorous disposition in the English parliament might confirm the Dutch, and defeat the measures which were now designed; and therefore he procured, by his friends in the house of commons, an address to the king, desiring him to declare war against France.

The commons vote an address for a war with France.

The design of this address was to disengage the king from the part he was acting as a mediator of the treaty carrying on at Nimeguen, and to prevail upon him to enter seriously into a war; with the real view of reducing the French monarch to such a condition as might prevent his being any longer formidable to Europe, or capable of disturbing its tranquillity.

A. D.
1677-8.

Debated in
the house
of lords.

The address was carried up by Lord Russell to the lords for their concurrence; and was debated, for two days, in a committee of the whole house; during which debate Lord Shaftesbury exerted himself with his usual eloquence. The ministry exerted their whole strength to get that part of the address, which was indeed the foundation of it, omitted, and obtained a majority in their favour; so that, after some conferences between the houses, the address was lost.

Though the king had demanded, in all his speeches, supplies for a war with France, he was, in fact, extremely averse to it; and was endeavouring to procure, by his mediation, a separate peace between France and Holland, on the French king's own terms; and such a peace was afterwards effected.

Vindication
of Lord
Shaftes-
bury's
opposition
to the
court.

It may not here be improper to make a few remarks with regard to some aspersions which have been thrown on Lord Shaftesbury's conduct. It has been said that he was of a restless and factious disposition; that he magnified too much the errors of government, and kept the people in a continual alarm. But when it is considered that regal power hath almost universally aimed at being independent of the people; that,

when corruption has gained an influence in the senate, the liberties of a state must be in the greatest danger; and that the rescuing of a country from slavery often depends on a particular crisis; we cannot be insensible that a real patriot ought to be always upon his guard; that he should watch every step which is taken towards introducing an arbitrary government, and endeavour to stop every avenue by which it may be admitted.

A. D.
1677-8.

Lord Shaftesbury was too well versed in the history of former ages, too well acquainted with the nature of mankind, to be ignorant of these truths, and of their peculiar application to the situation of things in England; and there were recent instances before him of other nations having been subjected to absolute authority. He was sensible that his country was in danger, in consequence of the tyrannic views of the court, the servile and degenerate temper of many of the nobility and gentry, the slavish principles of the clergy, the luxury spreading among the people, and the numbers who were daily corrupted by the church of Rome; and he well knew that it was only by rendering the danger conspicuous and glaring, that he could rouse up such a public spirit as would save the constitution from destruc-

A. D.
1677-8.

tion. Without, therefore, being concerned at any reflections that might be cast on his conduct, or alarmed at any enemies it might create him, he persisted in opposing whatever he thought to be wrong, even when he stood single in his opposition.

Thus, upon the 23rd of March 1677-8, he alone entered his dissent against the lords spiritual sitting on the trial of the Earl of Pembroke for murder. The right of the bishops to sit upon any trial in capital cases became, in the next parliament, a subject of great contest between the two houses; and the commons were strenuous, likewise, in their opposition to it.

A.D. 1678.
The popish
plot.

In the year 1678, a discovery was made of the popish plot; with regard to which every reader may form his own judgment from the narratives and trials which were published at that time. It is certain that great pains were taken to stifle it by the men whose interest it was to have it concealed; and where the crown and the principal persons about the court set themselves to destroy the credit of any plot, they have powerful means of doing it, by secreting or intimidating the witnesses, by blasting their reputation, or by buying them off. The nation, however, in general, gave credit to it; and both houses of parliament unani-

mously declared that there was sufficient evidence for the belief of it. A.D. 1678. Indeed, whoever can read Coleman's letters, or reflect on the zeal of the Duke of York for popery, the king's secret attachment to it, the influence which his favourite mistress, who was a papist, had over him, and on many other circumstances that might be mentioned; whoever considers what a number of priests were daily brought into the nation, and the countenance which was shown them; whoever calls to mind their busy intrigues, their earnestness in gaining proselytes, and their open attempts afterwards in the reign of James the Second; must carry his incredulity to a very great length if he is not persuaded that the court had a view of introducing an arbitrary government, and that the papists were equally solicitous for restoring their religion.

Whether there was a conspiracy entered into against the king's life may be questioned; but that there was a design of infinitely worse consequence, a design laid against the constitution and the religion of our country, ought not to admit of a moment's doubt. The wisest protestants, both at home and abroad, thought that a secret catholic league was formed against the protestant inte-

A.D. 1678. rest by the popish clergy and several of their princes; nor were there wanting many circumstances that might induce such a belief.¹¹⁶

Lord Shaftesbury's zeal in discovering its authors.

As Lord Shaftesbury had been longer and more intimately acquainted with the views of the popish faction than most men, he had the greater reason to credit the evidence for the conspiracy; and he thought it incumbent upon him not to be terrified from doing his utmost towards the discovery and prosecution of its authors. He was chairman of the committee of the house of lords when Prance was examined about the murder of Sir Edmundbury Godfrey, and when other witnesses were produced with regard to the plot.

This station naturally gave him the direction of the inquiry; and this, joined with his zeal for the discovery, a zeal which was not a little augmented by the knowledge he had of the general designs of the court and the papists, rendered him very obnoxious to them. In order to defeat the discovery, it was the business of the papists to discredit the evidence, and to asperse the reputations

¹¹⁶ Shaftesbury was now, as I have already remarked, aware of the first secret treaty. Arlington had betrayed the secret to Ormond and Shaftesbury in 1673.—Letter from Colbert to Louis the Fourteenth.—*Dalrymple*, p. 90.

of those who were most intent upon bringing A.D. 1678. every circumstance to light. As, on this account, Lord Shaftesbury stood the most exposed to their virulence, he was accused in a pamphlet of threatening Prance in the severest manner, at an examination, if he did not charge some persons of the highest dignity with being concerned in the murder of Godfrey. This pamphlet was written by an anonymous author, who produced no authority for his assertion; and when it is considered how improbable it was that Lord Shaftesbury should use such methods in the presence of his fellow peers, many of whom were unquestionably men of honour, the accusation will gain no credit with any impartial person. Rapin justly observes that these assertions are produced without authority: he reasons with great candour upon them, and points out the improbabilities and incoherences contained in them.

Bishop Burnet charges Lord Shaftesbury with driving on the execution of the jesuits and the other persons who on their trials were found guilty of being concerned in the plot.¹¹⁷ He says,

Remarks
on Bishop
Burnet.

¹¹⁷ The bishop does not however, with some authors, attribute the original invention of this plot to Shaftesbury. Speaking of a private interview he had with Charles, at this time he says,

A.D. 1678. the shedding of so much blood, upon doubtful evidence, was owing to Lord Shaftesbury. This is a heavy accusation, and which ought not to have been brought against any man by a christian and a protestant bishop, unless it had been supported by the strongest testimonies. But let the matter be fairly considered. Lord Shaftesbury, who had examined the evidence—an evidence that induced both houses of parliament to vote, *nemine contradicente*, that there was and had been a damnable and hellish plot, contrived and carried on by popish recusants, for assassinating the king, for subverting the government, and destroying the protestant religion,—and who had examined this evidence in a committee of the house of lords, might very probably and very reasonably be earnest for bringing the delinquents to their trials. But, after condemnation, the execution of them depended solely on the king. Lord Shaftesbury

“The king suspected some had set on Oates and instructed him, and he named the Earl of Shaftesbury. I was of another mind. I thought the many gross things in his narrative showed there was no abler head than Oates or Tonge in the framing of it: and Oates in his first story had covered the duke and the ministers so much, that from thence it seemed clear that Lord Shaftesbury had no hand in it, who hated them much more than he did popery.”—*Burnet*, i. 438.

had at this time no interest in him; he was A.D. 1678. absolutely obnoxious to him; and, therefore, cannot justly be charged with driving on the executions.¹¹⁸

The bishop, who sometimes seems to believe the plot, acknowledges that he himself endeavoured to discredit the evidence. Sir William Jones, the attorney-general, he says, took it ill of him that he should disparage them; so did others. Lord Shaftesbury said, "that all those who undermined the credit of the witnesses were to be looked on as public enemies." The bishop owns that he had frequent conferences, at this time, with the king and the Duke of York, and about the plot. These conferences were known, and might afford some ground for apprehension in Lord Shaftesbury and others that Dr. Burnet was too much attached to the court.

One passage in the bishop's history, upon the

Mistake of
the bishop
corrected.

¹¹⁸ The answer to this is very evident. These executions were pressed forward by the popular party, and the king was reluctantly forced to acquiesce. Bishop Burnet says, speaking of Coleman's trial, and of the report that he was kept from making confessions by the hopes the duke gave him of a pardon at Tyburn: "But he could not be so ignorant as not to know that at that time it was not in the king's power to pardon him, while the tide went so high."

A.D. 1678. affair of the plot, is remarkable. He says, upon Lord Stafford's trial, " Jones, in the name of the commons, resumed the evidence against him with great force. He said, indeed, nothing for supporting Oates ; for the objection against him was not to be answered."* If the bishop had looked into the State Trials, he would have found that Sir William Jones expatiated very largely upon the evidence of Oates, and supported it very strongly. This will be apparent from one or two paragraphs.

" My lord was pleased to object that the doctor was a man subject to passion, and he brought in the lieutenant of the Tower to speak of some hot words that passed between them. My lords, I will allow the doctor to be a man of passion ; nay, if my lord please, a man that is not of the deepest reach. But your lordships will observe, that passionate men are not often malicious, and that a man who is not of a deep judgment could never have contrived and invented a narrative consisting of so many particulars, and they so coherent, if they were false ; and if his narrative be not true, he must be endued with more subtlety and wicked policy than, upon trial, we can find

* Burnet's History, vol. i. p. 492.

in him: so that what my lord hath objected as to A.D. 1678. his infirmities, is no diminution of the truth of what he says, but rather a confirmation of it."

And afterwards. "There is another thing, my lords, that I would pray your lordships to observe. These witnesses, Mr. Dugdale and Dr. Oates, do give such an evidence as is impossible to be given unless it were true: for other witnesses, when they are put out of their road, and asked questions they did not expect, are commonly to seek, and must pump for an answer, and then answer with great difficulty and wariness; but these two witnesses do not only answer with readiness when you ask them any question, but what is contained in every new answer doth add a farther probability and confirmation to what they said before: and I must needs say of them, it were impossible for any man in the world to contrive a story of so many particulars, and so consistent in every part of it, and yet the same should be false; and, which is more, after so many trials, not one material circumstance of what they say contradicted by any solid proof." Certainly this is saying something, and in a very strong manner, for supporting Oates.

A.D. 1678.

Proceed-
ings in par-
liament.

Whilst the heat continued in parliament upon account of the plot, Lord Shaftesbury and his friends procured some bills which were of the greatest consequence. One, in particular, was to disable papists from sitting in parliament; and it considerably weakened the popish interest. It readily passed the house of commons, but met with greater difficulty in the house of lords, where a proviso was added in favour of the Duke of York.

Whether the plot was actually carried on so far as the evidence deposed, or not,¹¹⁹ it is certain that the behaviour of the papists gave the world reason to believe it. Their bold and alarming conduct was founded on having the successor to the crown of their own persuasion. As this circumstance alone, without any others, was extremely threatening to the protestant religion,

¹¹⁹ It cannot be supposed that the authors of this work mean to assert the veracity of Oates and his accomplices. Mr. Hume says, with much reason, "There are three events in our history which may be regarded as touchstones of party-men: an English Whig who asserts the reality of *the* popish plot, an Irish catholic who denies the massacre of 1641, and a Scotch jacobite who maintains the innocence of Queen Mary, must be considered as men beyond the reach of argument or reason, and must be left to their prejudices."—Vol. v. note N.

Lord Shaftesbury formed the design of a bill of A.D. 1678. exclusion; and concerted this with Lord Russell, Sir Henry Capel, and the rest of his friends in the house of commons. They resolved to proceed by degrees; and, in order to try how such an attempt would be received, they first procured a debate for an address to his majesty that he would be pleased to remove the Duke of York from his person and counsels. This debate was twice adjourned, but it was an evident preparative to the bill. The king viewed it in that light; and, before it could be resumed upon the last adjournment, he went to the parliament, and told the houses that he would be ready to pass any laws to make them safe under his successor, if such laws did not tend to impeach the right of succession.

Upon these proceedings of the commons, and their vigorous prosecution of the plot, the king grew dissatisfied with them, and therefore dissolved them, on the 24th of January 1678-9,¹²⁰

A. D.
1678-9.
Parliament
dissolved.

¹²⁰ The joy evinced by the popular party must have immediately convinced the king that this was a false step. In a quarto pamphlet, containing a collection of Andrew Marvell's political pasquinades, I find several sets of verses written upon this occasion. There was also published a list of the members who enjoyed places or pensions, and the amount of their emoluments, and the catalogue makes a large pamphlet. This

A. D.
1678-9.

after they had continued near eighteen years, and had, in the course of that time, considerably changed their character. At first they had favoured the prerogative in the highest degree; but afterwards, when the evil designs of the crown became too conspicuous to be denied, they became more patriotic and less compliant.

Meeting of
the new
parliament.

The day after the dissolution, writs were issued for a new parliament, which was appointed to meet on the 6th of March. The elections went generally against the court; which the king perceiving, he sent the Duke of York out of England, in order to persuade his new parliament that he was not governed by his brother.

The parliament met on the 6th of March 1678-9. The house of lords, on the 25th of the same month, entered into a debate upon a motion to take into consideration the state of the nation. Upon this occasion, Lord Shaftesbury made a very remarkable speech. Rapin quotes some part of it in his history; but says, he does not insert the whole, "because so much pains were taken to represent Lord Shaftesbury as the

house of commons had passively submitted to some very strong accusations of bribery, made openly in the house by its own members.

great enemy of the king, and the first mover of the whole party, that whatsoever came from him must be suspected." The reader may see it here at large.

A. D.
1678-9.

"MY LORDS,

"You are appointing the consideration of the state of England to be taken up, in a committee of the whole house, some day next week. I do not know how well what I have to say may be received, for I never study either to make my court or to be popular: I always speak what I am commanded by the dictates of the spirit within me.

Remarkable speech
of Lord
Shaftesbury.

"There are some considerations that concern England so nearly, that without them you will come far short of safety and quiet at home. 'We have a little sister, and she hath no breasts; what shall we do for our sister in the day when she shall be spoken for? If she be a wall, we will build on her a palace of silver; if she be a door, we will inclose her with boards of cedar.' We have several little sisters without breasts; the French protestant churches, the two kingdoms of Scotland and Ireland. The foreign protestants are a wall, the only wall of defence of England. Upon

A. D.
1678-9.

it you may build palaces of silver, glorious palaces.

“The protection of the protestants abroad is the greatest power and security the crown of England can attain to, and which can only help us to give a check to the growing greatness of France. Scotland and Ireland are two doors, either to let in good or mischief upon us: they are much weakened by the artifice of our cunning enemies, and we ought to inclose them with boards of cedar.

“Popery and slavery, like two sisters, go hand-in-hand. Sometimes one goes first, sometimes the other, in-a-doors; but wherever the one enters, the other is always following close at hand.

“In England, popery was to have brought in slavery; in Scotland, slavery went before, and popery was to follow.

“I do not think your lordships or the parliament have jurisdiction there. It is a noble and ancient kingdom: they have an illustrious nobility, a gallant gentry, a learned clergy, and an understanding worthy people; but yet we cannot think of England as we ought without reflecting on the condition they are in. They are under the same prince, and the influence of the same

favourites and counsels. When they are hardly dealt with, can we, that are the richer, expect better usage? for it is certain, that, in all absolute governments, the poorest countries are always most favourably dealt with.

A. D.
1678-9.

“When the ancient nobility and gentry there cannot enjoy their royalties, their shrevaldoms, and their stewardaries, which they and their ancestors have possessed for several hundreds of years, but that now they are enjoined by the lords of the council to make deputations of their authorities to such as are their known enemies; can we expect to enjoy our Magna Charta long, under the same persons and administration of affairs? If the council-table there can imprison any nobleman or gentleman for several years, without bringing him to trial, or giving him the least reason for what they do, can we expect the same men will preserve the liberty of the subject here?

“I will acknowledge that I am not well versed in the particular laws of Scotland; but this I do know, that all the northern countries have, by their laws, an undoubted and inviolable right to their liberties and properties: yet Scotland hath outdone all the eastern and southern countries in

A. D.
1678-9.

having their lives, liberties, and estates subjected to the arbitrary will and pleasure of those that govern. They have lately plundered and harassed the richest and wealthiest countries of that kingdom, and brought down the barbarous Highlanders to devour them; and all this without almost a colourable pretence to do it. Nor can there be found a reason of state for what they have done but that those wicked ministers designed to procure a rebellion at any rate, which, as they managed, was only prevented by the miraculous hand of God; or otherwise all the papists in England would have been armed, and the fairest opportunity given, in the just time, for the execution of that wicked and bloody design the papists had: and it is not possible for any man that duly considers it to think other but that those ministers who acted so were as guilty of the plot as any of the lords that are in question for it.

“My lords, I am forced to speak this the plainer, because, till the pressure be fully and clearly taken off from Scotland, it is not possible for me, or any thinking man, to believe that good is meant us here.

“We must still be upon our guard, apprehend-

ing that the principle is not changed at court, and that these men that are still in place and authority have that influence upon the mind of our excellent prince, that he is not, nor cannot be that to us, which his own nature and goodness would incline him to.

A. D.
1678-9.

“I know your lordships can order nothing in this; but there are those that hear me can put a perfect cure to it. Until that be done, the Scottish weed is like death in the pot, *mors in olla*. But there is something too, now I consider, that most immediately concerns us,—their act of twenty-two thousand men to be ready to invade us on all occasions. This, I hear, the lords of the council there have treated as they do all other laws, and expounded it into a standing army of six thousand men. I am sure we have reason and right to beseech the king that that act may be better considered in the next parliament there.

“I shall say no more for Scotland at this time. I am afraid your lordships will think I have said too much, having no concern there. But if a French nobleman should come to dwell in my house and family, I should think it concerned me to ask what he did in France; for if he were there

A. D.
1678-9.

a felon, a rogue, a plunderer, I should desire him to live elsewhere; and I hope your lordships will do the same thing for the nation, if you find the same cause.

“My lords, give me leave to speak two or three words concerning our other sister, Ireland. Thither, I hear, is sent Douglas’s regiment, to secure us against the French. Besides, I am credibly informed that the papists have their arms restored, and the protestants are not many of them yet recovered from being the suspected party. The sea towns, as well as the inland, are full of papists. That kingdom cannot long continue in the English hands if some better care is not taken of it. This is in your power, and there is nothing there but is under your laws. Therefore I beg that this kingdom, at least, may be taken into consideration together with the state of England; for I am sure there can be no safety here, if these doors be not shut up and made sure.”

[These speeches, which Shaftesbury was continually delivering in the house, and distributing throughout the nation, produced an immense effect. This one, tinged as it is with the phraseology of the period immediately preceding, was so skilfully addressed to the passions of the

Scotch that it called forth a rebellion. Forty written copies were sent off to Edinburgh the same night that it was spoken. The morning after their arrival eight thousand men were in arms. Shaftesbury and his party supported them by urging, that to send English troops into Scotland was contrary to the articles of treaty; and the city petitioned against the expedition. Charles mitigated its unpopularity by entrusting its conduct to Monmouth; and this young nobleman justified his father's confidence, by suppressing a rebellion which he might easily have rendered an instrument for securing the succession to himself.¹²]

A. D.
1678-9.

Rapin, who, as was before observed, quotes a part of this speech, says, "Thus much is certain, that his observation on the slavery of Scotland was exactly true; and that the Duke of Lauderdale, supported by the court, exercised among the Scots a tyranny unknown to their forefathers. What therefore could the English imagine when they saw a neighbouring kingdom, invested with

Rapin's
observation
upon it.

¹²¹ The effects of this speech are stated upon the authority of a pamphlet quoted by Roger North, and called, *The Spirit of Popery speaking out of the mouths of Fanatical Protestants*, p. 73.

A.D.
1678-9.

no less privileges than England, governed in so absolute a manner under the same king and the same ministry? Could they expect that the same principles would not be followed in England if it could be done with the same ease?"

A.D. 1679.
Scheme for
a new
council.

The king, to amuse the parliament, and gain time for his design, (as Rapin observes,) resolved to establish a new council; "into which were admitted some lords most opposite to him, as the Earls of Shaftesbury and Essex. This council consisted of thirty members: fifteen of whom were ever to be the present chief officers of his crown and household; ten were to be taken out of the nobility, and five out of the commons. But he took care, in this model of his council, to have a majority of such as were devoted to him. The Earl of Shaftesbury was made president of this council, though no man was more hated by the king. His aim was to persuade the public and the parliament, that he was resolved entirely to change his manner of governing, and be guided in all affairs whatsoever by the advice of the new council. But this was only to amuse the public; for the king found it impossible to depart from his principles concerning religion or government, and most of his new counsellors were equally

unwilling to sacrifice the royal authority to the will of the parliament." A.D. 1679.

Sir William Temple says, in his Memoirs, "that he was the person who first suggested the scheme of this new council to the king, and that the whole matter was consulted, and deduced upon paper, between the king and him alone, and lasted in the debate and digestion about a month; that afterwards his majesty ordered Sir William to communicate it to the lord chancellor, Lord Essex, and Lord Sunderland; that they received it with pleasure and amazement; and my lord chancellor said, it looked like a thing from Heaven fallen into his majesty's breast." But when we reflect upon the nature of a court, and on the king's character, it will be difficult to suppose that, for a whole month, he had not acquainted his principal ministers with it, and especially ministers who had his entire confidence; as was the case with regard to the lord chancellor, Lord Sunderland, and Lord Essex.

Sir William Temple's account of the forming of the new council.

"They went the next day,"* says Sir William, "to his majesty, and had a very long audience; upon which no difficulty arose but two that were wholly personal. Sir William had proposed Lord

* Sir William Temple's Memoirs.

A.D. 1679. Halifax as one of the lords ; whom the king had at first opposed, and now raised new difficulties, and appeared a great while invincible in them, but at last consented. The other was concerning Lord Shaftesbury, whom the king proposed, to which the lord chancellor, Lord Sunderland, and Lord Essex agreed ; but Sir William disputed it from the first mention to the last conclusion of it ; and, when he saw it would be concluded, he walked away to the other end of the room, not knowing well whether he should have gone out or not if the doors had been open : but turning again, he desired his majesty to remember that he had no part in Lord Shaftesbury's coming into his council or his affairs ; that his majesty and the other three lords had resolved it without him, and that he was still absolutely against it ; upon which the king laughed, and turned his anger into a jest."

Proofs of Sir William's hatred to Lord Shaftesbury.

This is certainly a convincing proof of the hatred Sir William bore to Lord Shaftesbury ; a hatred which carried him so far, that, even in the king's presence, he was unable to repress it, and urged him to oppose a measure so absolutely necessary for the success of the new scheme, that his disapproval of it was an error which a man of his

knowledge of the world could never have fallen A.D. 1679.
into but through the heat of passion.

Sir William says afterwards, "that when he found he could not hinder Lord Shaftesbury's being brought in, he would have been very well content to have had the design of the new council prove abortive." If he could suppose that these thirty lords and commons, men of the greatest credit, the amplest fortunes, and most extensive abilities, and the majority of whom were extremely attached to the king and the prerogative, would be solely influenced by Lord Shaftesbury, it must tend to give either the highest idea of Lord Shaftesbury, or the lowest of the rest of the council. If he did not suppose that they would be governed by Lord Shaftesbury, Sir William's readiness to sacrifice such a design, which was the only one he thought could save the nation, is a farther proof of his personal resentment.

Sir William wrote these Memoirs whilst Lord Shaftesbury was living. If he had written them after his death, perhaps his anger would have been less vehement. But, notwithstanding there is in them such a peculiar sharpness against Lord Shaftesbury, Sir William does not lay one thing to his charge that affects his integrity or his

Sir William produces no real charge against Lord Shaftesbury.

A.D. 1679. honour. "He knew him so little that, he says, he never had any talk with him, or anything to do with him but once, farther than in the council chamber; and that was at Lord Halifax's house, when they were digesting the treaty with Holland."*

Sir William, indeed, attributes the conduct of the parliament to the influence of Lord Shaftesbury; but whether this does not redound to his honour, let the reader determine. The following passages constitute the whole of Sir William's accusation.

Remarks on
Sir William
Temple
continued.

When the king acquainted the commons with the establishment of his new council, they received it with great coldness, suspecting it to be a mere court juggle, and referred it to time to explain the real truth of the case.

"This," says Sir William, "was the first effect of Lord Shaftesbury's good meaning to the king and his affairs." A very short time, however, proved it to be just what the commons suspected,—a mere court juggle.

"Matters were growing very untoward, by the practices of Lord Shaftesbury, with the Duke of Monmouth's cover at least, and upon the ill-

* Sir William Temple's Memoirs.

humour of the house of commons about the business of religion." This ill-humour was alarm at the great progress of popery, and the countenance it received from the court, and a zeal for preserving the protestant religion; which have generally and justly been regarded as highly commendable in the parliament at that time. A.D. 1679.

Again, "Both houses of parliament seemed to have no eyes but for the dangers of popery upon the duke's succession to the crown, which humour was blown up by all the arts and intrigues of the Duke of Monmouth and the Earl of Shaftesbury."

And afterwards, "The house of commons were busy in finding out expedients to secure the nation without changing the laws in point of succession; but could agree in none, being still diverted from fixing on any by Lord Shaftesbury's practices. The council fell upon the same scent with great earnestness and endeavour, and, after much hammering, agreed upon many heads to be offered the parliament, which are commonly enough known. These expedients," says Sir William, "were agreed upon by all the council except Lord Shaftesbury and me, who were against them upon different grounds."

A.D. 1679.

Sir William's chief reason was, "Because as he did not see any certain ease these expedients would give the king, though agreed to by the houses, so it was evident to all men, that they would leave the crown after him in shackles, which, put on upon the duke's occasion and in his time, would not be easily knocked off by any successor."

"My Lord Shaftesbury's ground was plain, and so expressed by him upon all occasions; which was, that there could be no security against the duke if once in possession of the crown."

If Lord Shaftesbury's judgment was plain upon this occasion, the events in King James's reign proved it to be right: when no laws were found to be a security against a prince who could assume a power of dispensing with them; against a king who, with an army at his command, determined to be absolute; and when the open attempts of the popish party exhibited a full proof of what nature their private ones had formerly been.

Different
political
views of Sir
William
and Lord
Shaftes-
bury.

Sir William says, "that Lord Shaftesbury was dissatisfied with him from the beginning. "They were, indeed, in their principles diametrically opposed. Sir William was an advocate for passive

obedience, and had, in his writings, carried so far A.D. 1679.
the notion of paternal dominion, that his friend Lord Halifax, who was a man of letters and no enemy to monarchy, had, as he himself acknowledged, reproved him for it. He was steadily attached to the interest of the Duke of York; Lord Shaftesbury knew the interest of the duke to be closely blended with that of France, popery, and absolute power, and he opposed it to the utmost. Sir William Temple was one of those who, out of council, had advised the prorogation of the parliament, in order to put a stop to the proceedings against popery and the plot; Lord Shaftesbury expressed openly in the house of lords very great resentment at this prorogation, and inveighed against its advisers. Sir William was a participator in the secret counsel for a dissolution of the same parliament, with which Lord Shaftesbury was equally offended; for the house of commons in being was composed of gentlemen of the best fortunes and quality, who had been truly chosen by the people, and who were too jealous of the court to be influenced by it. The houses were, indeed, at this time taking the most prudent steps for the liberty of the subject; and of these the habeas corpus act was the most memorable and effective.

A.D. 1679.

The reader, who considers Sir William's Memoirs with greater coolness than that with which they were written, must observe that, contrary to the author's intentions, Lord Shaftesbury forms a very important figure in them. He uses no collusions, no hypocrisy ; but is open and plain in his advice, and steady in his conduct.

Observations of Rapin.

Rapin, after speaking of Sir William's insinuations against Lord Shaftesbury, makes the following remarks, which are too pertinent to be omitted : " It is not easy to comprehend how a single man should have had credit enough in the country party to direct them as he pleased, if that party had not otherwise known what Shaftesbury laboured to make them believe. For instance, this earl insinuated that the nation could not be secured against the Duke of York ; and that, when he should once possess the crown, all provisions against him would vanish. Was he in the wrong ?" After relating some of the causes of the nation's suspicions and fears, he goes on : " After this, how is it possible to believe that Lord Shaftesbury's intrigues and artifices were the sole cause of the commons' distrust ? I do not doubt that he contributed to them ; and that, being so well informed as he was of the king's secret de-

signs, he opened the eyes of many people who, perhaps, would have been deceived by the artifices of the court. But this is not what is meant by ascribing the people's fears and jealousies to the intrigues of the earl. That he was actuated by a spirit of revenge, is no concern of mine; but the event too plainly showed how agreeable were his advices to the interest of the kingdom."

A. D. 1679.
History of
the House
of Commons.

CHAPTER VII.

The Habeas Corpus Act passed.—Charles dissolves the Parliament, and dismisses Shaftesbury from the Presidency of the Council.—Presbyterian Plot.—Attempts to assassinate Shaftesbury; their failure.—Petitions for a Parliament.—Shaftesbury's advice to the Council is acted upon.—He presents the Duke of York as a Popish Recusant.—Meeting of Parliament.—The Commons pass the Exclusion Bill.—The Lords throw it out.—Lord Shaftesbury's Speech in the Lords.—He is accused of inventing the Popish Plot.

A.D. 1679.

History of
the habeas
corpus act.

THOUGH Lord Shaftesbury was appointed president of the council, he continued the same unwearied endeavours in the cause of freedom, and the same unalterable regard for the liberty of the subject. As he had suffered so much by an unjust imprisonment, he employed himself in contriving the most effectual methods to preserve others from the same calamities. With this view he drew up one of the most important and useful bills that was ever brought into parliament, entitled, "An act for the better securing the liberty of the subject." This is now universally known by the name of the Habeas

Corpus act; but at that time, it was commonly A.D. 1679. called Lord Shaftesbury's act.¹²²

Shaftesbury was not only the originator of this bill, we owe to him its preservation also and ultimate success; for after it had passed the house of commons, it met with great opposition in the lords. The court exerted their whole strength to throw it out, and Lord Shaftesbury supported it with his usual eloquence and spirit. Several amendments were made in it by the lords, with some of which the commons disagreed; and this occasioned many free conferences between them.

The court resolved to make its advantage of these disputes; and on the 27th of May 1679, it was known that the king intended to go to the house that morning, and, after passing the acts ready prepared, to prorogue the parliament, which would have defeated the habeas corpus bill. Another conference was therefore moved

¹²² It is well known that this bill was produced by the imprisonment under an order of council of Francis Jenkes, a London trader. The infamous conduct of the judges in refusing him a habeas, had an effect which they little foresaw. "Thank God that I have still courage enough to serve his majesty," said the chancellor as he resolved to perjure himself, and prostitute his high office to support his master's tyrannical conduct.—See this case at large in the *State Trials*, vol. vi. col. 1819.

A.D. 1679. for to be held immediately. This the ministry opposed; but upon the division it was carried, by fifty-seven against fifty-five, that the conference should be held presently; and the commons agreed at it to admit of the lords' amendments. The Earl of Shaftesbury, who reported the conference, acquainted the lords that the bill was delivered closed up and perfected: and the king coming immediately after to the house, it passed into a law.

When the house of peers divided upon it, it was carried by an accident. Bishop Burnet says, "Lord Grey and Norris were named to be the tellers. Lord Norris, being a man subject to vapours, was not at all times attentive to what he was doing: so, a very fat lord coming in, Lord Grey counted him for ten, as a jest at first; but seeing Lord Norris had not observed it, he went on with this misreckoning of ten: so it was reported to the house, and declared, that they who were for the bill were the majority, though it indeed went on the other side."

When the numbers were reported from the woolsack,* the ministry, who knew their strength,

* By the minute book of the house of lords it appears that there were one hundred and seven lords only present, and one hundred and twelve were counted upon the division.

were surprised; and whilst they were whispering one another, Lord Shaftesbury, who found there was a mistake and guessed their intentions, immediately started up, and spoke upon the first thing that occurred to him almost an hour. Whilst he was speaking, several lords went out and others came in; so that it was impracticable to re-tell the house. By this means the bill was carried; and for this bill alone, if there were no other reason, the name of Lord Shaftesbury deserves to be held in grateful remembrance by every friend to the British constitution.

A.D. 1679.

May 26.

This was the only act of any consequence that passed in the new parliament; for when the commons had voted, *nemine contradicente*, "that, the Duke of York being a papist, the hopes of his coming such to the crown had given the greatest encouragement to the conspiracies and designs of the papists against the king and the protestant religion;" when they had begun an inquiry after the pensioners in the last parliament, several of whom were discovered; and, especially, when they had brought into the house the bill of exclusion; the king determined to prorogue them. This resolution he formed and executed without the knowledge of his coun-

Parliament
prorogued.

A.D. 1679. cil,¹²³ though he had solemnly declared that he would be guided in all things by their advice: and soon after, contrary to the sentiments of the greater part of them, he dissolved the parliament.

and dis-
solved.

New parlia-
ment sum-
moned.

This dissolution took place on the 12th day of July 1679; and the king summoned another parliament to meet on the 17th of October following. Rapin says, "he hoped to find the next more tractable, but was very much deceived. The people, who no longer regarded what came from the court, affected to send such members as were of the country party, as being the most proper to oppose the designs of the king. The Earl of Shaftesbury was at the head of this party, and without doubt greatly contributed to inflame the passions of the people."

Lord Shaf-
tesbury's
activity.

Lord Shaftesbury did, indeed, exert himself at this time in an extraordinary manner. His spirit and the influence of it were universally apparent. The members of the house of commons had

¹²³ This is not altogether correct. Charles persuaded Sunderland, Essex, and Halifax, who led the majority of the council, that the dissolution was to their interest, as the commons were preparing a remonstrance against both himself and his ministers: but Shaftesbury was not so easily duped; he threatened aloud that the advisers of this measure should answer for it with their heads.

taken their measures chiefly from him; and A.D. 1679.
 the party of the people, who were zealous for
 the civil and religious liberties of their country,
 looked upon him as their head, and were govern-
 ed by his advice.

Before the meeting of the parliament, the king
 was seized at Windsor with three fits of an in-
 termitting fever, upon which occasion the Duke
 of York was privately sent for over, and came
 to England with great speed and secrecy. The
 king, being recovered,* pretended surprise at his
 arrival; but this dissimulation was not capable
 of deceiving the Earl of Shaftesbury, who moved
 in the council that his majesty should be ad-
 vised to send the duke abroad again. The mo-
 tion however was rejected, because the majority
 of the council were entirely devoted to the de-
 signs of the king and the duke.

The king's
illness.

Motion of
Lord Shaf-
tesbury
concerning
the Duke
of York.

When the duke afterwards, in October, met
 the king at Newmarket, in order to finish the
 scheme of his going to Scotland in the room
 of the Duke of Lauderdale, Lord Shaftesbury,
 as we are informed by Bishop Burnet, “ called
 a council at Whitehall, and represented to them
 the danger the king was in by the duke’s being

* Rapin.

A.D. 1679. so near him, and pressed the council to represent this to the king. But they did not agree to it; and, upon the king's coming to London, he was turned out from being president of the council."

Lord Shaftesbury dismissed from the council.

Parliament not suffered to meet.

The king, having now given himself entirely up to the direction of the Duke of York, resolved not to suffer the parliament to meet; and accordingly, on the 15th of October, two days before the time appointed for its sitting, he prorogued it, without the advice of his council.

Sham plot.

"In the latter end of the same month, about a fortnight after the prorogation," says Rapin, "a sham plot was discovered, contrived by the papists, to bring an odium upon the Presbyterians and the heads of the country party. This project had been formed, the beginning of August, by the Countess of Powis, Elizabeth Cellier a midwife, the Earl of Castlemain, and the five lords in the Tower. The design was to make use of false witnesses to accuse Oates of perjury; to assassinate the Earl of Shaftesbury; and to charge the Duke of Buckingham, the Earl of Essex, the Duke of Monmouth, the Lord Halifax, and several considerable citizens of London, with being concerned in a plot against the king. One Dangerfield was to be the principal actor in this scene."

Lord Shaftesbury was likewise set down A.D. 1679. among the rest, as a participator in this imaginary conspiracy.*

This Dangerfield had gone through almost every scene of villany, and was taken out of gaol for the present purpose. He made several attempts to assassinate Lord Shaftesbury, for which he was to receive (as he afterwards declared) five hundred pounds. To excite him to it, he was told by his employers, that if they were rid of Lord Shaftesbury, as they were of Sir Edmund-bury Godfrey, it would be no difficult thing to bear down the rest of their opposers. He was promised that one Mr. Regaut, a Virginian merchant of Mrs. Cellier's acquaintance, should come to him to instruct him in the most dexterous and probable means of putting the design in execution, and to secure the payment of the five hundred pounds. He went two or three times to Thanet House in Aldersgate Street,¹²⁴ where

Attempts to
assassinate
Lord
Shaftes-
bury:

By Danger-
field;

* Bishop Burnet takes no notice of the designs to assassinate Lord Shaftesbury, or of his being set down in the scheme to be sworn against.

¹²⁴ Both Shaftesbury and Buckingham, from constantly living in the city, were familiarly called aldermen; the former generally Alderman Shiftsbury, a piece of good-humoured raillery by

A.D. 1679. Lord Shaftesbury had lived from the time the seals were taken from him. At the first time he pretended private business with him; but, as he was very incoherent in his relation of it, Lord Shaftesbury kept such a very attentive eye upon him, that he was deterred from his purpose; especially when he saw one of his lordship's gentlemen coming into the room.

By Mrs.
Cellier.

Dangerfield was equally unsuccessful in a second attempt. Upon this, * Mrs. Cellier reproached him with cowardice, and said she would undertake to do it herself. She went accordingly, and desired a private audience of him, which he granted: but, as she was not ready enough in her tale to blind his sagacity, he kept a watchful eye on her during the discourse; and perceiving her to be fumbling in her pockets, he gently laid his hand upon hers, and pleasantly drolled with her concerning her pretended business, till Mr. Wheelock, one of his gentlemen, came into the room, and pulling out her hand, found the dag-

* This Mrs. Cellier was a woman of an abandoned character, and some time after was executed for the murder of her husband.

which the people reminded their idol that his acts while lord chancellor were not forgotten.

ger in her pocket ; upon which, Lord Shaftesbury A.D. 1679.
dismissed her without any expression of resentment.¹²⁵

“The Lady Powis,” says Rapin, “gave Dangerfield a model of the plot, which he was to convey into the house of some pretended conspirator, and there cause it to be found. He made some attempts to assassinate the Earl of Shaftesbury, but was prevented by several accidents. At last, on pretence of seeing some rooms, which he said he intended to hire, he went to Colonel Mansel’s lodgings, and found means to pin some dangerous papers behind his bed’s head. This done, he informed two officers of the custom-house that there were in those lodgings prohibited goods to the value of two thousand pounds. The officers repairing thither the 22nd of October, searched everywhere in hopes of finding their prey ; but, as they did not think to search behind

Rapin’s account of Dangerfield.

¹²⁵ We can have little hesitation in rejecting these stories of attempts at assassination. They evidently belong to the party fictions of the time. The account given in the text is an abridgment of a more minute and incongruous story in Raleigh Redivivus. Notwithstanding the indiscriminating appetite for gossip which the author of that tract evinces, he has been quoted as an authority by many historians ; perhaps Rapin relied upon him.

A.D. 1679. the bed, Dangerfield himself found the papers. The officers, carrying these papers to their superiors, had orders to return them to Mansel. Four or five days after, the colonel meeting Dangerfield in the street, carried him directly to Whitehall, and brought him before the king and council. He was strictly examined, and after a full hearing, his contrivance being detected, he was sent to Newgate. Two days after, on the 27th of October, he made a confession upon oath, before the lord mayor, of the whole scheme, and discovered the persons by whom he had been employed."

Deposition
of Francisco de
Faria.

Besides these attempts of Dangerfield and Mrs. Cellier, Francisco de Faria, interpreter to the Portuguese ambassador, deposed, at a committee of the house of lords, "that the ambassador would have persuaded him to destroy the Earl of Shaftesbury by throwing a hand-granado into his coach." * By order of the peers, Faria gave in an information in writing concerning the affair; and alleged that the reason why the ambassador wished for the destruction of Lord Shaftesbury was, because he obstructed all the designs of the papists.

*Journals of the House of Lords.

The king had prorogued the parliament from A.D. 1679. the 17th of October to the 20th of January, and he had promised the Duke of York, before his departure for Scotland, that it should not sit during the whole winter. The detection of Dangerfield's sham plot, and the countenance which he had received, irritated the minds of the people to a great degree; and their uneasiness was not a little increased, when it was soon after known that the king intended to prorogue the parliament from January to the November following.

Bishop Burnet says, that "upon this Lord Shaftesbury set on foot petitions for a parliament, in order to the securing the king's person and the protestant religion." These petitions were for the sitting of the parliament on the 20th of January, pursuant to the late prorogation. They were, indeed, set on foot by him; and, to exhibit an example to the rest of the nation, he, and the Earls of Huntingdon, Clare, and Stamford, with six other peers, being introduced by Prince Rupert, presented the following petition to the king:

Petitions
for the
meeting of
parliament.

By ten
peers ;

"SIR,
"WE are here to cast ourselves at your majesty's feet, being ten of the peers of your realm

A.D. 1679. of England; and, in the name of several others of our fellow peers, do humbly beg that your majesty would consider the great danger your royal person is in, as also the protestant religion and the government of these your nations:—We humbly pray that, in a time when all these are so highly concerned, your majesty will effectually use your great council,—the parliament.

“Sir, out of the deepest sense of duty and loyalty to your majesty, we offer it as our humble advice and earnest petition, that the parliament may sit at the time appointed; and that your majesty would be graciously pleased to give public notice and assurance thereof, that the minds of your majesty’s subjects may be settled and their fears removed.”

By the city
of London
and other
places.

A petition was afterwards presented from the city of London, which was soon followed by others from all parts of the country; and if they did not induce the king to let the parliament sit, they convinced the nation of the necessity of it.

The king
incensed at
them.

The king was much incensed at these petitions. He told Mr. Thynne,* who presented the Wiltshire petition, and was accompanied by Sir Walter St. John and Sir Edward Hungerford, “that he

* London Gazette, January 22, 1679-80.

came from a company of loose disaffected people; adding, What do you take me to be? and what do you take yourselves to be? I admire, gentlemen of your estates should animate people to mutiny and rebellion. You would not take it well I should meddle with your affairs, and I desire you would not meddle with mine, especially with a matter that is so essential a part of my prerogative."

A.D. 1679.

His treatment of the petitioners.

He spoke still more roughly to Sir Robert Barrington, Colonel Mildmay, Mr. Honeywood, and other gentlemen, who presented the petition from the county of Essex: and to the gentlemen who presented the petition from the quarter sessions of Berkshire, he said, "that they would agree the matter over a cup of ale when they met at Windsor, though he wondered his neighbours should meddle with his business."

The king published a proclamation against these petitions: and, as soon as the parliament was prorogued in January, the court procured addresses to be sent from several places, declaring their abhorrence of petitions for the sitting of the parliament.

A. D.
1679-80.

Proclamation against petitions.

Counter addresses.

Though Lord Shaftesbury had been for some time removed from being president of the council,

A. D.
1679-80.

he was in frequent consultations with several of the members of it; as, the Earl of Essex, Lord Russell, Lord Cavendish, Sir Henry Capel, and Mr. Powle, who were greatly influenced by him. This appears from the following excellent paper, which displays his spirit and the frankness of his temper.

“ January 30, 1679-80.

Lord Shaftesbury's
paper of
advice to
some mem-
bers of the
council.

I HAVE altered my opinion since last night, on second thoughts; and now think nothing clearer than that you ought to quit, and that presently and in a body together, both for your own sakes, the nation's, and the king's service.

“ You may not have so fair an opportunity again offered, which so distinctly justifies you to the world.

“ Every day may engage you in new and illegal proceedings, like that of the proclamation against petitions.

“ If the D. of Y. shall be admitted to the council, as in Scotland, you must either quit upon that, which is a less score, or continue his fellow counsellors.

“ If the papists (of whom the D. of Y. is the manifest head) shall attempt, within a few weeks, to alter the religion and government by the

assistance of the French, whose forces and provisions are ready upon the coast next us, your lordships have continued as blind watchmen for us, and will never be received into the number of good Englishmen.

A.D.
1679-80.

“As our affairs stand, we have no hopes of a good composure but by the weight of the nation in a manner compelling us to take right counsels. To this end, your lordships going out together at this time extremely serves; and the sense of the body of the protestants and sober men, made known to his majesty by their addresses and petitions through the whole nation, will not a little contribute.

“Those that are not for this cure, must either rely on violent courses, or resolve to give up all. It can have no effect upon the Dutch treaty. The reputation of our alliance is necessary to them, and more they hope not from us. The prorogation to the 15th of April makes all things else impossible. Besides, the Dutch alliance is a thing in itself good and desirable; but as wholesome and nourishing meat, though good in itself, yet to a disordered stomach serves only to add to the disease, so with us, if this alliance serves to raise money, men, and ships, for our mutual

A. D.
1679-80.

defence, under the conduct of his Rl. Hs., it had been much better never made. Nothing is good but what tends to set things right at home in the first place.

“Your lordships, in particular, will never have such an opportunity to restore yourself to the nation again. The counsel of good husbandry, to live without parliaments, the counsel of dissolving the last parliament, both lie heavy upon your lordships; and must leave you and others, in the opinion of the best men, as the worst ministers that have come yet.¹²⁶ But you may by this convince all good men, that what is past was mistake, not malice; and they will be ready to embrace, with open arms, men of your consideration, both for quality, ability, and fortune.

“Your lordships see with what candour and clearness I deal with you. I expect the same again from you; and when you have read this paper twice, and taken out what notes you please with your own hand, that you burn it before the bearer. As you are, you serve only to delude the

¹²⁶ This observation supports the remark I have before made, that the majority of the council did indeed consent to the dissolution of the last parliament, although they were brought to agree to the measure by the artful misrepresentations of their master.

world with vain expectations of what they shall never find, and give the papists an opportunity to stalk with you, and destroy us under your bellies."

A. D.
1679-80.

The reader will observe that the paper is dated January 30, 1679-80; and it appears, by the Gazette, that the next day, Lord Russell, Lord Cavendish, Sir Henry Capel, and Mr. Powle, waited on his majesty, and desired to be excused from any farther attendance at the council.

Four members of the council resign.

Though it is not mentioned in the paper to whom it was delivered, it must probably have been to Lord Essex, as the other four counsellors had been averse to the prorogation and dissolution. The Earl of Shaftesbury had lived many years in great friendship with the Earl of Essex, who, during his lieutenancy in Ireland, desired upon frequent occasions (as appears by several letters) the advice of the other, and constantly applied to him, when he wanted any unreasonable grant of the king's in Ireland to be opposed. This he particularly did when Phoenix Park was granted to the Duchess of Cleveland. Lord Essex, as Sir William Temple says, had given his opinion in council both for the prorogation and dissolution.

A.D. 1680.

The court
and popish
party
elated.

The coun-
try party
dejected.

The Duke
of York
presented
as a popish
recusant.

The court was much elated by the addresses against the petitions, and by the long interval of parliament. The Duke of York, who was sent for from Scotland, grew sanguine in his hopes, and the papists became more active than ever. It was thought that the king would trust no longer to parliaments, but govern without them, and receive his supplies from France. The country party were astonished: from astonishment they were sinking into despair, and, indeed, with reason; for the duke was returned in triumph, and seemed to be fully confirmed in his power. But difficulties only served to rouse the Earl of Shaftesbury's courage, and to quicken his attention. He saw that it was necessary to take some step the boldness of which would animate the people and confound the counsels of the court. On the 26th of June 1680 he went publicly to Westminster-hall, attended by several peers and gentlemen of the first distinction, and at the King's Bench bar, by a bill in form, he presented the Duke of York to the grand jury as a popish recusant. “* The thing was but too true, and the whole kingdom was sensible of it: but, till this time, no man had dared to take such a step;

* Rapin.

which was considered as a formal design to break A.D. 1680.
all measures with the duke."

The following reasons for the indictment were subscribed by himself, and the other peers and gentlemen who joined with him in the presentment.

"First. Because, the 25th Car. II. when an act was made to throw popish recusants out of all offices of place and trust, the Duke of York did lay down several great offices and places, (as lord high admiral of England, generalissimo of all his majesty's forces both by land and sea, governor of the Cinque Ports, and divers others,) thereby to avoid the punishment of that law against papists. The reasons for the indictment.

"Secondly. 30th Car. II. when an act was made to disable papists from sitting in either house of parliament, there was a proviso inserted in that act, 'that it should not extend to the Duke of York,' on purpose to save his right of sitting in the lords' house; though he refuseth to take those oaths which protestant princes ought to do.

"Thirdly. That his majesty, in his speech on the 6th day of March, the thirty-first year of his reign, doth give for a reason to the parliament why he sent his brother out of England, because he would leave no man room to say that he had

A.D. 1680. not removed all cause which might influence him to popish counsels.

“Fourthly. That there have been divers letters read in both houses of parliament, and at the secret committees of both houses, from several cardinals and others at Rome, and also from other popish bishops and agents of the pope in other foreign parts, which do apparently show the great correspondencies between the Duke of York and the pope; and how the pope could not choose but weep for joy at the reading of some of the duke’s letters, and what great satisfaction it was to the pope to hear the duke was advanced to the catholic religion: that the pope has granted briefs to the duke, sent him beads, ample indulgencies, with much more to this purpose.

“Fifthly. That the whole house of commons hath declared him to be a papist in their vote, Sunday, April the 27th, 1679: It is resolved, *ne-mine contradicente*, that the Duke of York’s being a papist, and the hopes of his coming such to the crown, has given the greatest countenance and encouragement to the present conspiracy and designs of the papists against the king and the protestant religion. What this conspiracy and

design is, will appear by a declaration of both A.D. 1680.
houses of parliament, March the 25th, 1679 :
Resolved, *nemine contradicente*, by the lords spiritual and temporal, and commons, in parliament assembled, That they do declare that they are fully satisfied, by the proofs they have heard, there now is, and for divers years last past hath been, a horrid and treasonable plot and conspiracy, contrived and carried on by those of the popish religion, for the murdering of his majesty's sacred person, and for the subverting the protestant religion, and the ancient, well-established government of this realm.

“ Sixthly. That, besides all this proof, and much more to this purpose, it is most notorious and evident he hath for many years absented himself from protestant churches during religious worship. These are the reasons which induce us to believe the Duke of York a papist.

“ Huntingdon, Thomas Thynne,

“ Shaftesbury, William Forrester,

“ Grey, John Trenchard,

“ Russell, T. Wharton,

“ Cavendish, William Cooper,

“ Brandon, Gilbert Gerrard,

“ Edward Hungerford, Scroop Howe.”

“ Henry Calverly,

A.D. 1680.

The grand jury dismissed.

Whilst the grand jury were considering this indictment,* they were sent for by the Court of King's Bench and dismissed, so that nothing farther was done in the affair. By the dismissal of the jury, a great number of indictments were discharged; an act of authority without parallel, and fraught with the most dangerous consequences not only to many private persons, but to the public.

The court greatly alarmed.

This step of Lord Shaftesbury's surprised the nation, and inspired the country party with new life: on the other hand, it alarmed the court to the greatest degree. The king sent the Duke of York back to Scotland, with assurances that he would never forsake him or his interest; and, to quiet the minds of the people, his majesty resolved to meet the parliament in the winter.

Meeting of parliament.

Accordingly, it actually met on the 21st of October; and the commons began with a resolution that they ought, in the first place, to proceed effectually in suppressing popery and preventing a popish successor.

On the second day, they came to the following

* Bishop Burnet takes no notice of this indictment nor of the house of commons upon it afterwards. of the conduct of the judges,

resolutions, which justify what Lord Shaftesbury had done in promoting the petitions for the sitting of the parliament.

A.D. 1680.

Resolutions
of the house
of com-
mons.

“Resolved,—That it is, and ever hath been, the undoubted right of the subjects of England to petition the king for the calling and sitting of parliaments, and redressing of grievances.

“Resolved,—That to traduce such petitioning as a violation of duty, and to represent it to his majesty as tumultuous and seditious, is to betray the liberty of the subject, and contribute to the design of subverting the ancient legal constitution of this kingdom, and introducing arbitrary power.”

The house of commons soon after came to another resolution, in relation to the dismissing of the grand jury upon Lord Shaftesbury's bill of indictment of the Duke of York.

“Resolved,—That the discharging of the grand jury by any judge, before the end of the term, assizes, or sessions, while matters are under their consideration and not presented, is arbitrary, illegal, destructive to public justice, a manifest violation of his oath, and is a means to subvert the fundamental laws of the kingdom.”

A.D. 1680.

Exclusion
bill.Debate
upon it in
the house of
lords.

The house then went with great earnestness into the bill of exclusion, which passed there by a large majority, and was sent up to the house of lords, who threw it out upon the first reading. The king was in the house during the debate, which lasted till near midnight. The Earl of Shaftesbury was the principal speaker for the bill, as the Earl of Halifax¹²⁷ was against it. Bishop Burnet says, that the last “had a visible superiority to Lord Shaftesbury in the opinion of the whole house; and that was to him triumph enough.”

Lord Shaftesbury's whole speech upon this occasion is not preserved, and therefore the bishop's assertion cannot be contradicted. However, as he afterwards says, that “the country party brought it nearer an equality than it was imagined they could do, considering the king's earnestness in it, and that the whole bench of bishops was against it,” it may be presumed that Lord Shaftesbury did acquit himself with his usual eloquence, spirit, and judgment. This is the rather to be supposed, as the bill was indebted to him

¹²⁷ Halifax's conduct upon this occasion obtained for him the nick-name of “the Trimmer.” He opposed the exclusion bill, but proposed an act of banishment against the Duke of York during the king's life.

for its existence. He foresaw that the bishops A.D. 1680 would be the principal opposers of the bill; and therefore, in his speech, after he had clearly shown the absurdity of the doctrine of hereditary right, the authority of the parliament to transfer the title to the crown, the repugnancy of the Romish religion to our constitution, and the violent temper and bigotry of the duke, he turned towards the bishops' bench, and, in a pathetic manner, implored them to have a regard to the civil rights of their fellow-subjects, and the church of which they were the fathers. He told them that they had it in their power to exclude a popish prince by law, and thereby preserve their religion and liberties; but that, if they should lose the present opportunity, they must afterwards either run into a rebellion to save themselves, or sit down with the melancholy portion of bondage, ignominy, and repentance.

Though Lord Shaftesbury's speech on the exclusion bill is not preserved, there is another, which he made a few days afterwards, that is well worthy of the reader's perusal. This he spoke in a debate upon his majesty's speech, when the king himself was present, as he had been in the debates upon the bill of exclusion; which renders

A.D. 1680. the boldness of it the more remarkable. It was spoken in a committee, by way of reply.

“ My Lords,

Speech of
Lord Shaf-
tesbury in a
debate on
the king's
speech.

“ In this great debate concerning the king's speech, the sad state and condition we are in, and the remedies thereof, I have offered you my opinion; and many lords have spoken admirably well to it, with great freedom and plainness, as the case requires.

“ Give me leave to offer you some few words, in answer to two or three of my lords of the earls' bench, that have maintained the contrary opinion.

“ My lord near me hath told your lordships that the precedent of Henry the Fourth that I offered you,—who was a wise and magnanimous prince, and yet, upon the address of his parliament, ‘ put away a great part of his family and council at one time,’—is no proper instance; because he was an usurper, had an ill title, and was bound to please the people.

“ My lords, I meddle not with his title. I am sure our king has a very undoubted one: but this my lord must allow, that that wise prince, having need of his people, knew no better way to please them, and to create a good intelligence be-

tween them and him, than to put away those A.D. 1680.
from court and council that were unacceptable to
them.

“ If our king had the same necessity to please the people,—though for other reasons than want of a title,—yet I am sure the precedent holds that a wise prince, when he hath need of his people, will rather part with his family and counsellors than displease them.

“ My lords, this noble lord near me hath found fault with that precedent which he supposes I offered to your lordships concerning the chargeable ladies at court; but I remember no such thing I said. But if I must speak of them, I shall say, as the prophet did to King Saul, ‘ What meaneth this bleating of the cattle?’ and I hope the king will make me the same answer, ‘ that he reserves them for sacrifice, and means to deliver them up to please his people:’ for there must be, in plain English, my lords, a change. We must neither have popish wife, nor popish favourite, nor popish mistress, nor popish counsellor at court, nor any new convert. What I spoke was about another lady that belongs not to the court, but like Sempronia in Catiline’s conspiracy, does more mischief than Cethegus.

A.D. 1680.

“ In this time of distress, I could humbly advise our prince would take the same course that the Duke of Savoy did, to suffer neither strangers nor ambassadors to stay above a few weeks in his country ; for all the strangers and ambassadors have served the plot and design against us. I am sure they have no tie to be for us.

“ But, my lords, what I rose up to speak was more especially to my lord on the earls’ bench that spoke last, and sits behind me ; who, as he hath the greatest influence in our present counsels, so he hath let fall to you the very root of the matter, and the hinges upon which all turns. He tells you that the house of commons have lately made offers to the king, and he wonders we do not expect the king’s answer to them before we enter into so hot and high debates.

“ He tells you, if the king be assured of supplies, we cannot doubt of his compliance in this and all we can ask ; for otherwise the king must fall into that which is the worst condition of a prince, to have his people have no confidence in him. My lords, this is what I know they put the king upon ; and this is what we must be ruined by, if we may not with freedom and plainness open our case.

“My lords, it is a very hard thing to say we A.D. 1680. cannot trust the king, and that we have already been deceived so often, that we see plainly the apprehension of discontent is no argument at court: and though our prince be himself an excellent person that the people have the greatest inclinations to love, yet, we must say, he is such an one as no story affords us a parallel of. How plain and how many are the proofs of the design to murder him? How little is he apprehensive of it?

“The transactions between him and his brother are admirable and incomprehensible; his brother’s designs being early known to aim at the crown, before his majesty’s restoration to this kingdom.¹²⁸

“The match with a Portugal lady not likely to have children, contrived by the duke’s father-in-law, and no sooner effected but the duke and his party make proclamation to the world that

¹²⁸ It is well known that there existed, at that time, a design to bring in James instead of Charles. The Roman Catholics laboured very hard to effect this object, and Charles had so little confidence in the integrity of his brother that he refused to countenance a projected insurrection which it was proposed that James should head.—*Clarendon Papers*. See also *Somers’ Tracts*, viii. 342. Buckingham was supposed to be deeply implicated in this intrigue.

A.D. 1680. we are like to have no children, and that he must be the certain heir.

“He takes his seat in parliament as Prince of Wales, has his guards about him, the Prince’s lodgings at Whitehall, his guards upon the same floor, without any interposition between him and the king; so that the king was in his hands and in his power every night: all offices and preferments being bestowed by him; not a bishop made without him.

“This prince changes his religion to make himself a party; and such a party that his brother must be sure to die, or be made away with, to make room for him. Nothing could preserve his majesty but that which I hope he will never do,—give greater earnest to that wicked party than his brother could: and after all, this plot breaks out plainly, headed by the duke, his interest, and his design.

“How the king hath behaved himself ever since the breaking out of it, the world knows. We have expected, every hour, that the court should join with the duke against us; and it is evident more hath been done to make the plot a presbyterian plot, than to discover it.

“The prorogations, the dissolutions, the cutting

short of parliaments, not suffering them to have A.D. 1680. time to look into anything, have showed what reason we have to have confidence in the court. We are now come to a parliament again ; by what fate or riddle I cannot guess, neither do I understand the riddle of it.

“ The duke is quitted, and sent away : the house of commons have brought up a bill to disable him of the crown ; and I think they are so far extremely in the right ; but your lordships are wiser than I, and have rejected it. Yet you have thought fit, and the king himself hath made the proposition, to make such expedients as shall render him but a nominal prince.

“ In the mean time, where is this duke that the king and both houses have declared unanimously thus dangerous ? Why, he is in Scotland, raising forces upon the terra firma that can enter dry foot upon us, without hazard of winds or seas ; the very place he should be in to raise a party there, to be ready when from hence he shall have notice ; so that, this being the case, where is the trust ? We all think the business is so ripe, that they have the garrisons, the arms, the ammunition, the seas, and soldiery, all in their hands. They want but one good sum of money to set

A.D. 1680. up and crown the work, and then they shall have no more need of the people; and I believe whether these are pleased or no, will be no great trouble to them.

“My lords, I hear of a bargain made in the house of commons, and an address made to the king. But this I know, and must boldly say and plainly, that the nation is betrayed if, upon any terms, we part with our money till we are sure the king is ours. Have what laws you will and what conditions, they will be of no use but waste paper before Easter, if the court has money to set up for popery and arbitrary designs in the mean while.

“On the other hand, give me leave to tell you, my lords, the king has no reason to distrust his people. No man can go home and say, that, if the king complies with his people, they will do nothing for him. We want a government, and we want a prince that we may trust even with the spending half our annual revenues for some time, for the preservation of these nations.

“The growing greatness of the French cannot be stopped with a little expense, nor without a real and hearty union of the king and his people. It was never known in England that our princes

wanted supplies either for their foreign designs, A.D. 1680. or for their pleasures; nothing ever shut the English purses but the fear of having their money used against them.

“The hour that the king shall satisfy his people that what we give is not to make us slaves and papists, he may have what he will; and this your lordships know, and all mankind that know us. Therefore let me plainly tell your lordships, the arguments which the present ministers use are to destroy the king, and not preserve him: For if the king will first see what we will do for him, it is impossible, if we are in our senses, we should do anything: but if he will first show that he is entirely ours; that he weds the interest and religion of the nation; it is impossible—it is impossible he should want anything that we can give.

“But I see how the argument will be used: Sir, they will do nothing for you, what should you do with these men? But, on the other hand, I am bold to say, Sir, you may have anything of this parliament. Put away those men, change your principles, change your court, and be yourself;’ for the king himself may have anything of us.

“My lords, if I have been too plain, I beg your

A.D. 1680. pardon. I thought it was the duty of an English nobleman, at this time, to speak plain, or never.

“I am sure I mean well: and if any man can answer and oppose reason to what I say, I beg they will do it; for I do not desire or propose any question merely for talking sake.

“I beg this debate may last some days, and that we may go to the very bottom of the matter, and see whether these things are so or no, and what cure there is for the evil we are in; and then the result of our debates may produce some proper question.

“However, we know who hears us; and I am glad of this, that your lordships have dealt so honourably and so clearly in the king’s presence that he cannot say he wants a right state of things. He hath it before him, and may take counsel as he thinks fit.”

The boldness of this speech, in the king’s presence, struck every person with surprise. As it was spoken upon a reply, without premeditation, it was not, perhaps, taken down so correctly as his lordship delivered it. However, it was soon printed, and above three hundred thousand copies of it were sold.¹²⁹

¹²⁹ It is scarcely credible that this speech was delivered as it

As it has been always agreed, that this and the last house of commons were chiefly influenced by the Earl of Shaftesbury, it must be allowed that there appeared a noble spirit in them for the liberties of the people. Besides the exclusion bill, which the commons had passed, they prosecuted several of the judges for illegal practices and judgments, and particularly for discharging the grand jury when Lord Shaftesbury presented the bill of indictment against the Duke of York. They ordered a bill* to be brought in for the more effectual securing of the meetings and sittings of frequent parliaments; a second,* that the judges should hold their places and salaries *quam diu se bene gesserint*; a third, for an association of all his majesty's protestant subjects for the safety of his person, the defence of the protestant religion, and the preservation of his majesty's protestant

A.D. 1680.

Noble spirit
in the house
of commons.

* The rough drafts of both these bills are among Lord Shaftesbury's papers.

was reported. Shaftesbury sent his speeches to the press himself, and, doubtless, then introduced those passages which were so highly effective in rousing the people, but were too personally offensive to be spoken in the presence of the sovereign. Shaftesbury had already felt the inconvenience that might be produced by a far less flagrant indiscretion.

A.D. 1680. subjects against all invasions and oppositions, and for preventing the Duke of York or any other papist from succeeding to the crown; and a fourth, against illegal exaction of money upon the people, and to make it high treason. They passed likewise a vote, “that no member of the house should accept of any office or place of profit from the crown, without leave of the house; nor any promise of any such office or place of profit during such time as he should continue a member of the house.”

Bill for
uniting his
majesty's
protestant
subjects.

Father Orleans imputes to Lord Shaftesbury, as a reproach, what must appear to every unprejudiced mind to be a laudable and noble design, his endeavouring to promote a strict union among the protestants. Accordingly, a bill was brought in, and committed, for uniting his majesty's protestant subjects. “* The act of 35 Eliz. for payment of twenty pounds a month for every person not resorting to their parish church, was apparently made against the popish recusants, but had been lately executed upon the protestant dissenters. Upon which the commons resolved, ‘That it is the opinion of this house, that the prosecution of protestant dissenters upon

* Kennet, vol. iii. p. 383.

the penal laws designed against the papists, is at A.D. 1680.
 this time grievous to the subject, a weakening
 the protestant interest, an encouragement to po-
 pery, and dangerous to the peace of the king-
 dom;’ and therefore they prepared another bill,
 ‘for exempting his majesty’s protestant subjects
 dissenting from the church of England from the
 penalties imposed upon the papists, by repealing
 the said act of the 35th of Eliz.’ This bill passed
 the commons, and was agreed to by the lords,
 and lay for his majesty’s assent; but when his
 majesty came to the throne to pass this among
 other bills, this was taken from the lords’ table,
 and never heard of after: which no man durst
 have done without the king’s command, or at
 least his privity or connivance at it.”

A. D.
1680-1.

The bill
stolen from
the lords’
table.

Some few of the most moderate of the clergy
 endeavoured, in their writings, to promote this
 union: and Dr. Compton, bishop of London,
 collected the judgments of several foreign pro-
 testant divines upon the unlawfulness of sepa-
 ration. “All this,” says Father Orleans, “was
 an artifice of the Earl of Shaftesbury, that all
 protestants might find it their interest to destroy
 the catholics; and so the Duke of York’s ex-
 clusion from the crown might be brought about.

Father Or-
leans’s re-
flections on
the Earl of
Shaftes-
bury.

A. D.
1680-1.

He projected an union among all the nonconformist sectaries and the church of England ; and, to bring it about, he put the house of commons upon pressing the king to repeal all the laws made by Queen Elizabeth against them. His majesty perceived what they tended to, and, making a true judgment upon the occasion of that demand, first prorogued, and afterwards dissolved, the parliament."

Answer to
them.

It was undoubtedly the interest of the papists to keep up a division among the protestants. This maxim had been laid down by them in the beginning of the king's reign, and the court had promoted several measures for the same purpose ; such as the uniformity, the corporation, and the five-mile acts. The division was begun with ardour, and continued to be promoted by every artifice and intrigue. The design of uniting the protestants at this time was, therefore, a most important one ; and the method of doing it was prudent and well grounded. The first preparatory step to it was the bill to repeal the act of the 35th of Eliz. As the court saw the consequence of this step, and the king could not with decency refuse his assent to the bill, recourse was had to the contemptible and shameful artifice of stealing it away.

In the mean while, several designs were formed for causing it to be believed that the popish plot was an invention of the Earls of Essex and Shaftesbury, Lord Wharton, and others of the peers. Simpson Tonge, in particular, son of Dr. Tonge who had made the first discovery of the plot, delivered, on the 8th of August 1680, a memorial to the king, setting forth that the popish plot was a contrivance of his father and Dr. Oates, assisted by Lord Wharton, Lord Essex, and Lord Shaftesbury. He alleged that the two former especially were very intimate with his father; that my Lord of Essex was exceedingly zealous in the Irish plot, sent several letters from London concerning it, and was one whom his father frequently corresponded with, and who had been encouraged by him vigorously to defend the contrivance. The Earl of Essex, and the rest of the peers, were extremely earnest for Simpson Tonge's being strictly and solemnly examined; and accordingly he was brought before the council, where his memorial was read. At his examination, he behaved with great confidence; said that the popish plot was all a contrivance, and principally fixed it on the Earl of Shaftesbury: upon which one of the Lords of

A. D.
1680-1.

Simpson
Tonge's
accusation
of Lord
Shaftesbury
and some
other peers.

A. D.
1680-1.

council asked him whether Coleman's letters were Lord Shaftesbury's contrivance also? This silenced and confounded him; and, as he had no proofs to support what he had alleged, the council ordered him to be committed to prison, where he soon after died.

CHAPTER VIII.

The Oxford Parliament summoned.—Petition.—Progress of the Elections.—Meeting of the Parliament at Oxford.—Its Dissolution.—Letter from Mr. Locke to Mr. Stringer.—Impeachment of Fitzharris.—Absolute designs of Charles.—Lord Shaftesbury is seized and again committed to the Tower.

THE king, alarmed at the spirit of the house of commons, had recourse to his old method of prorogation. On the 10th of January, he prorogued the parliament to the 20th; and, two days before the meeting, dissolved it by proclamation. At the same time, another was summoned to meet at Oxford on the 21st of March.

A. D.
1680-1.

Parliament
prorogued
and dis-
solved.

New one
summoned
to meet at
Oxford.

This dissolution of the parliament gave great offence to the nation, as did the summoning the new one to meet at Oxford. The inconveniences apprehended from its meeting at that place are very strongly set forth in the following petition, which was drawn up by Lord Shaftesbury, signed by him and fifteen other peers, and presented to his majesty by the Earl of Essex.

A. D.
1680-1.

“ To the King’s most excellent Majesty.

“ The humble petition and advice of the Lords
undernamed, Peers of the realm,

“ Humbly sheweth,

Petition
against its
meeting
there.

“ That whereas your majesty has been pleased,
by divers speeches and messages to your houses
of parliament, rightly to represent to them the
dangers that threatened your majesty’s person,
and the whole kingdom, from the mischievous
and wicked plots of the papists, and the sudden
growth of a power unto which no stop or remedy
could be provided, unless it were by parliament
and an union of your majesty’s protestant subjects
in one mind and one interest :

“ And the lord chancellor, in pursuance of your
majesty’s commands, having more at large demon-
strated the said dangers to be as great as we, in
the midst of our fears, could imagine them ; and
so pressing, that our liberties, religion, lives, and
the whole kingdom, would be certainly lost if a
speedy provision were not made against them :

“ And your majesty, on the 21st of April 1679,
having called unto your council many honour-
able and worthy persons, and declared to them
and the whole kingdom that, being sensible of the

evil effects of a single ministry, or private audience, or foreign committee, for the general direction of your affairs, your majesty would for the future refer all things unto that council, and by the constant advice of them, together with the frequent use of your great council the parliament, your majesty had hereafter resolved to govern the kingdom ; we began to hope we should see an end of our miseries.

A. D.
1680-1.

“ But, to our unspeakable grief and sorrow, we soon found our expectations frustrated. The parliament then subsisting was prorogued and dissolved before it could perfect what was intended for our relief and security ; and, though another was thereupon called, yet, by the many prorogations, it was put off till the 21st of October past ; and, notwithstanding your majesty was then again pleased to acknowledge that neither your majesty’s person nor the kingdom could be safe till the matter of the plot was gone through, it was unexpectedly prorogued on the 10th of this month, before any sufficient order could be taken therein : all their just and pious endeavours to save the nation were overthrown ; the good bills they had been industriously preparing, to unite all your majesty’s protestant subjects, brought to

A. D.
1680-1.

nought; the discovery of the Irish plot stifled; the witnesses that came in frequently more fully to declare that, both of England and Ireland, discouraged; those foreign kingdoms and states who, by a happy conjunction with us, might give a check to the French power, disheartened even to such a despair of their own security against the growing greatness of that monarch as we fear may induce them to take new resolutions, and, perhaps, such as may be fatal to us; the strength and courage of our enemies, both at home and abroad, increased; and ourselves left in the utmost danger of seeing our country brought into utter desolation.

“ In these extremities we had nothing, under God, to comfort us but the hopes that your majesty (being touched with the groans of your perishing people) would have suffered your parliament to meet at the day unto which it was prorogued, and that no further interruption should have been given to their proceedings in order to the saving of the nation; yet that failed us too. But when we heard that your majesty, by the private suggestion of some wicked persons, favourers of popery, promoters of French designs, and enemies to your majesty and the kingdom,

(without the advice, and, as we have good reason to believe, against the opinion even of your privy council,) had been prevailed with to dissolve it, and to call another to meet at Oxford, where neither lords nor commons can be in safety, but will be daily exposed to the sword of the papists and their adherents, of whom too many are crept into your majesty's guards; the liberty of speaking according to their consciences will be thereby destroyed; and the validity of all their acts and proceedings consisting in it left disputable. The straitness of the place no way admits of such a concourse of persons as now follow every parliament. The witnesses that are necessary to give evidence against the popish lords, such judges or others whom the commons have impeached or had resolved to impeach, can neither bear the charge of going thither, nor trust themselves under the protection of a parliament that is itself evidently under the power of guards and soldiers.

“The premises considered, we your majesty's petitioners, out of a just abhorrence of such a dangerous and pernicious counsel, (which the authors have not dared to avow,) and the direful apprehensions of the calamities and miseries that may ensue thereupon, do make it our most humble prayer and advice, that the parliament

A. D.
1680-1.

A. D.
1680-1.

may not sit at a place where it cannot be able to act with that freedom which is necessary, and especially to give unto their acts and proceedings that authority which they ought to have amongst the people, and have ever had, unless impaired by some awe upon them (of which there want not precedents); and that your majesty would be graciously pleased to order it to sit at Westminster, it being the usual place, and where they may consult and act with safety and freedom. And your petitioners shall ever pray.

“ Monmouth, Shaftesbury,

“ Kent, Mordaunt,

“ Huntingdon, Evers,

“ Bedford, Paget,

“ Salisbury, Grey,

“ Clare, Herbert,

“ Stamford, Howard,

“ Essex, Delamere.”

The petition
ill received
at court.

It may easily be supposed that this petition, which so boldly set forth the misconduct of his majesty and his ministers, was very ill received at court. Rapin says, “ that the king returned no answer, but contented himself with frowning upon the lords who presented it.” However, it met with great approbation from the public: the

Applauded
by the pub-
lic.

city of London ordered their sheriffs to return their thanks to the noble peers who presented it; and the example of the metropolis was followed by many other places.

A. D.
1680-1.

In the mean time, the Earl of Shaftesbury was as active as ever in securing the elections for members of parliament; and the counties and corporations throughout England were generally so well satisfied with the proceedings of the last house of commons, that they resolved to choose the same persons again without putting them to any expense. By this means a laudable effort was made to repress that pernicious custom of bribery and debauchery, which had not only scandalized the nation, but poisoned and almost destroyed the very constitution of our parliaments.

Elections.

The city of London and most of the counties and corporations returned their thanks to the members who had been rechosen, for their former conduct, and desired them to pursue the same measures in the present parliament. They were particularly requested to secure the meeting and sitting of frequent parliaments; to promote the long wished for union among all his majesty's protestant subjects; to repeal the act of the 35th of Eliz. and the corporation act; and to persist in

Thanks
given to the
members of
parliament.

A.D.
1680-1.

the exclusion of the Duke of York from the throne.

The following instructions, drawn up by Lord Shaftesbury, are among his papers; but the county for which they were intended is not named.

“GENTLEMEN,

Instructions drawn
up by Lord
Shaftes-
bury.

“WE have chosen you two, our knights, to represent this county at the parliament to be holden at Oxford the 21st of March next; and we do give you sufficient power to act on our behalf in all things that shall be found, by joint advice with the members of parliament chosen for other places, to be for our public good and welfare; which we must leave to your integrities and prudence. Only there are some particulars so manifestly and indisputably necessary, that we cannot omit to give you our instructions and directions beforehand in them.

“First. We all expect that you should, to the last, insist for a bill to exclude the Duke of York by name, and all other popish successors, from coming to the imperial crown of this realm.

“Secondly. That you insist upon an adjustment to be made betwixt the king’s prerogative of calling, proroguing, and dissolving parlia-

ments, and the rights of the people to have annual parliaments to despatch and provide for those important affairs and business that can nowhere else be taken care of; for, without the certainty of parliaments meeting in due distance of time from each other, and their sitting so long as shall be necessary for the despatch of the affairs of the nation, it is not possible but that our laws, liberties, lives, and estates should become in a short time at the will of the prince.

“Thirdly. We expect you should restore us to that liberty we and our forefathers have enjoyed, until these last forty years, of being free from guards and mercenary soldiers; it being the inseparable right of a free nation that they themselves, and no separate number of paid or hired men, should have the guard of their own prince, government, and laws.

“Lastly. Although we mention these three particulars as most necessary to us, yet there are several others of great importance which we leave to your wisdoms; assuring ourselves that, until you have fully provided for a complete security against popery and arbitrary power, you will not give any of our money.”

The apprehensions which prevailed at that

A. D.
1680-1.

A. D.
1680-1.

The mem-
bers go
armed to
the parlia-
ment.

time, of a design to overawe the parliament, made many of the lords and the house of commons resolve to go thither well attended. The Earl of Shaftesbury was one of the number, and a great retinue was formed for them by those who went voluntarily, from a principle of affection to their persons and the cause in which they were engaged. The city, in particular, sent a numerous body, well armed, for the security of its members.

Meeting of
the parlia-
ment at Ox-
ford.

The parliament was opened on the 21st of March, and, on the same day, Lord Shaftesbury brought in another bill to repeal the statute of the 35th of Eliz. On the next day, he made complaint of the former bill having been secreted, and moved that the house might be put into a committee to examine the business of the clerk's not presenting it at the last prorogation. The house accordingly went into a committee on the 23rd of March, and, to pursue the matter the more closely, the commons, on the 24th, went upon the same examination. It was likewise proposed, at a conference, that a committee of both houses should be appointed to inquire into the affair; and the proposal was ordered to be considered on the 29th of the same month: but,

the day before, on the 28th, the parliament was dissolved.¹³⁰ This showed that the court could not stand the test of an inquiry which was carried on with so much vigour, and in which the stealing away of the bill was justly represented as undermining the constitution of parliaments.

A.D. 1681.

It is dissolved.

The following letter of Mr. Locke gives a more particular account of the withdrawing of this bill, and the steps which were taken upon it, than has yet been published.

TO MR. STRINGER AT BEXWELL, NEAR CHELMSFORD
IN ESSEX.

“SIR,

Oxford, 26th March 1681.

“I THANK you for your letter, and for your good wishes therein. I hope our good patriots are not in so great danger in this place as you fear: however it is, I do not find here any great apprehensions of it: there is, indeed, a general

A letter from Mr. Locke to Mr. Stringer.

¹³⁰ In that very able tract, the joint production of Algernon Sydney, Lord Somers, and Sir William Jones, called, “A Just and Modest Vindication of the two last Parliaments,” published in answer to Charles’s declaration against their proceedings, it is said, “The peers at Oxford were so totally ignorant of the counsel, that they never once thought of a dissolution until they heard it pronounced; but the Duchess of Mazarine had better intelligence, and published the news at St. James’s many hours before it was done.”

A.D. 1681. despair that nothing will be done for the protestant settlement and security.

“On Monday the 21st, the king spoke to the two houses. His speech, I hear, was cried about London streets before it was printed here. I need not make any observations on it, nor tell you how it was resented. The lord chancellor said nothing but that the king commanded the commons to go and choose their speaker, and present him the next day at three in the afternoon. In the choice of Mr. Williams, at this time, there was this unusual, that, whereas one used to rise up and recommend, a great number with one voice called Mr. Williams to the chair, so that they could not tell who spoke first; but some say Mr. Montague was the first that stood up, and he and Sir Jo. Hotham conducted him to the chair. After the king's speech, the lords read the bill for repealing the 35th of Q. Elizabeth, and ordered it to be read the second time the next day.

“On Tuesday the 22nd, my Lord Shaftesbury moved that it might be examined, in a committee of the whole house, by whose default it was that the first bill of repeal of the 35th of Q. Eliza-

beth was not presented to the king upon the A.D. 1681. prorogation of the last parliament; which was accordingly ordered. Then they read the said bill a second time, and it was moved that it might be read a third time the next day; but my Lord Halifax desired it might be committed; not that he was against the bill or the expediting the passing of it, but that it might pass with the more formality. My lord chancellor was for the passing of the bill; the bishops were against it. My lord chancellor said it was always thought a hard law, and was never put in execution that he heard of but once: that it was judged by most lawyers to be expired, till the act of uniformity. By that act it was declared to be in force; and if we should hereafter be so unhappy as to have a king that should favour popery, it would be a dangerous tool in his hands against the protestants. With saying much more to that purpose, he wished them to expedite the passing of it. The Bishop of London replied upon him with much vehemence and some reflection; speaking long, but his speech was one of those that cannot be remembered. All that I could learn of it was, that the act of the 35th of Q. Eliz. was

A.D. 1681. the only means the church had now left to free herself of schism. A lord * (a friend of yours) replied, he thought that this bill had been lost by a court trick, to bring in a new way of a negative; but now he saw it was partly ecclesiastical, since they had rather leave such a weapon to fall into popish hands, than the church should lose it. The Lord Halifax said, he could easily guess what that lord would say; and that the bishops (for divers had spoken against the bill of repeal, as Ely, Salisbury, Durham, &c.) had given him great advantage by this opposition; and he could not but wonder at it, and feared the whole nation would suspect them. The issue was, the bill was committed to a private committee. At three in the afternoon the speaker presented himself to the king. There was nothing remarkable but that passage in the speaker's speech wherein he told the K. he might see the house of commons were not given to change, by their choosing him again for their speaker.

“On Wednesday the 23rd, the lords, in a grand committee, examined the clerk of the crown why he did not present the first bill of repeal to the

* Lord Shaftesbury.

king: his answer was, that the clerk of the parliament had always the custody of the bills, and that he presented all that the clerk of the parliament delivered to him; which was accepted as a sufficient answer. Then the clerk of the parliament was examined, who gave this account: that, understanding the king came in his robes, he brought the bills: as he was bringing them, he met my Lord Falconbridge, who asked him how many bills he had; he told him four: he said he heard the king would pass but three of them; whereupon he went up to my lord chancellor, and told him what my Lord Falconbridge said. My lord answered him, he did not know what the king would do, but he would ask him. The king bid him bring in the bills to the Prince's Lodgings to him: then the king took a certain lord aside, and talked with him in a corner of the room; after which he came to the clerk of the parliament, and told him he would not pass the bill of repeal. Then the clerk asked the king, if he should write upon the bill of repeal the words the king uses, and which, it seems, are writ upon it when the king refuses a bill: the king said, no, but that he should leave it there, and not bring it into the house to be offered. Many good

A.D. 1681.

A.D. 1681. debates were upon this subject, but they are too long to rehearse. The further consideration of it is adjourned to Tuesday next. All this day was spent by the house of commons in swearing their members.

“Thursday the 24th, the Lord Norris brought in my Lord of Danby’s petition, which was very short, not praying to be brought to a speedy trial, but setting forth his long imprisonment, and great infirmities thereby contracted, praying to be bailed. My Lord Aylesbury seconded it; my Lord Berkley, Arundel of Tre-rice, Clarendon, and others, pressed it; and if it had been put to the question, they would have carried it abundantly: but my Lord Halifax’s opposing it as a thing very unseasonable, that would breed heats and hinder the public business, put off the question, and the further debate of it, till Monday next. The rest that opposed it you will easily guess.

“Some part of this day the house of commons spent in swearing the rest of their members, settled committees, and received petitions about elections, and ordered four elections to be tried at the bar: that of Bristol being one, is to be heard on Monday se’nnight. Then they ordered to take into consideration the not tendering the

bill of repeal to the king the last parliament; A.D. 1681.
 on Friday and on Saturday, to take into consideration the preservation of the king's person and the protestant religion; upon which subject there were some warm debates, the exclusion of the duke being mentioned as the only expedient. The printing of the votes was likewise ordered, which Mr. Secretary Jenkins opposed with all his might, saying it was an appeal to the people; but he was soundly mumbled for his pains, and the vote carried with a torrent.

“ My time and my paper are almost at an end; and I must let alone yesterday's business, which was a great day in the house of commons.

“ The lord that the clerk of the parliament said went aside with the king in the Prince's Lodgings, it is whispered was my Lord Halifax; but the lords would not permit that Mr. Brown should be pressed to tell his name to the committee. We are told my Lord Halifax and Mr. Hyde are now the intimate and only counsellors.

“ I am, sir, your most humble servant,

“ J. LOCKE.”

The determination of the parliament to find out the means by which the bill of repeal was

Reasons of
the parlia-
ment's dis-
solution.

A.D. 1681. lost, seems to have been the principal reason for its speedy dissolution. There were, however, other reasons that co-operated with it; for the commons had gone with their former zeal upon the bill of exclusion, and had impeached one Edward Fitzharris for a treasonable libel written by him, of which a pretty full account is given by Rapin, Kennet, and several authors.

As Fitzharris's conduct was intended to ridicule the belief of the popish plot, to cast an odium on the country party, and to bring a false accusation against the protesting lords, of whom the Earl of Shaftesbury was always one, it may not be improper to insert some account of it in this place, from the historians just mentioned.

Rapin's account of Fitzharris's design.

“One Fitzharris,* an Irish papist, who had free access to the Duchess of Portsmouth, and kept a correspondence with her favourite woman, Mrs. Wall, and with the confessor of the French ambassador, having received several presents, and particularly one of two hundred and fifty guineas, undertook to prevail with one Edmund Everard, to write a libel against the king. Everard feigned to consent, and appointed a meeting to receive informations by which his pamphlet was to be

* Rapin.

framed. But, at the same time, he communicated A.D. 1681. the affair to Sir William Waller and Mr. Smith, and caused them to be concealed in a place where they might hear what passed between Fitzharris and him. The next day, being both together in a room, Fitzharris told Everard that he should write a libel against the king upon the following heads :

“ That the king and royal family were papists, and arbitrarily affected from the beginning :

“ That Charles the First had a hand in the Irish rebellion, and that Charles the Second did countenance the same by preferring Fitzgerald, Fitzpatrick, and Mountgarret, who were engaged in the said rebellion :

“ That the act forbidding to call the king a papist, was to stop men’s mouths when he should incline to further popery ; which appeared by his adhering so closely to the Duke of York’s interest, and hindering him being proceeded against by the parliament, and hindering the officers put in by the duke to be turned out ; and for that the privy counsellors and justices of the peace, who were for the protestant interest, were turned out of all places of trust :

“ That it was as much in the power of the

A.D. 1681. people to depose a popish possessor as a popish successor; and seeing there was no hope that the parliament, when they met at Oxford, could do any good, the people were bound to provide for themselves.

“Everard afterwards received these instructions in writing and drew up his libel, which was injurious to the king and full of sedition.

“This libel was to be dispersed by the penny post to the protesting lords; and particularly to the leading presbyterians, whose houses were to be searched in order to find this libel, which was to serve as a proof of a conspiracy formed by the presbyterians against the government.

“This is what Everard affirmed, and that the whole came from the court. At last, Waller having informed the king of the affair, the king ordered Secretary Jenkins to issue out a warrant for apprehending Fitzharris, and that Waller should execute it. Yet he was no sooner gone but Sir William declared he was informed by two worthy gentlemen ‘that the king was highly offended with him, saying, he had broken all his measures.’ However, Waller arrested Fitzharris, and sent him to Newgate.”

Kennet's.

Kennet says, “That this libel was to be fixed

upon the protestant dissenters, and to be dispersed by the penny post to the protesting lords and leading men in the house of commons, who were immediately thereupon to be taken up and searched. Everard affirmed the court had a hand in it, and that the king had given Fitzharris money, and would give him more if it had success. And this is so much the more to be credited, since the king himself told Sheriff Cornish that Fitzharris had, three months before his apprehension, been with him, and acquainted him he was in pursuit of a plot which very much related to his majesty's person and the government, &c.

“Fitzharris, being examined by Sir Robert Clayton and Sheriff Cornish, discovered a disposition, and at length a willingness, to discover the whole design the next day after. But to prevent it, in all appearance, he was that day removed into the Tower. The commons thought that all this looked so much like a trick and a continuation of the popish plot, that they resolved to impeach Fitzharris of high treason.”

When the impeachment was carried up to the lords, the court, to prevent a detection of the matter, ordered the attorney-general to acquaint

Fitzharris
impeached
by the
commons.

A.D. 1681. them with the examination taken against Edward Fitzharris, and to tell them he had an order from the king to prosecute the said Fitzharris at law, and that he had accordingly prepared an indictment against him. Upon this, by the influence of the ministry, the peers threw out the impeachment.

The impeachment thrown out by the lords.

The debate upon the affair was very long in the house of lords. Lord Shaftesbury, with his usual spirit, spoke for the impeachment; and when the question was carried against it, he drew up a protest, which was signed by himself and eighteen other peers.

Fitzharris executed.

“Fitzharris was executed on the 1st of July.* He had been prevailed, by Dr. Hawkins, (minister of the Tower, and soon after Dean of Chichester) to sign a paper, in which he accused Sir Robert Clayton, Sir George Treby, and the sheriffs, of subornation of perjury. His wife was not then admitted to him; but he wrote several letters to her, one the very morning on which he suffered, informing her how he was practised on with hopes of life if he would accuse the Earl of Shaftesbury of the libel. He declared that he was innocent, and that what he had deposed against

* State Trials, vol. iii. p. 289.

the papists was true. He charged her by no means to be prevailed on to swear falsely against any. These letters had such a tendency to destroy the credit of Hawkins's paper, that the court got her to deliver them upon the promise of a pension." A.D. 1681.

When the king had dissolved the parliament at Oxford, he resolved for the future to govern without one; and, indeed, from this time he became quite absolute. "What was still more remarkable," says Rapin, "he grew as sanguinary as he had hitherto appeared merciful; and, as soon as he had power in his hands, he made his enemies feel the most terrible effects of his vengeance." The king resolves to govern without parliaments.

[If we believe Lord Grey, this dissolution was not unaccompanied with great although unknown danger to Charles.

Shaftesbury, when he drew the exclusion bill, staked his life upon its success, and of this he was well aware. He knew the character of James too well to expect from him any forgiveness of provocations so deep, or any scruples as to the means of compassing his revenge. As the success of his measure became more problematical, Shaftesbury therefore became more desperate in his designs. He had long since entertained the project of placing

A.D. 1681. the Duke of Monmouth upon the throne; and it was not unreasonable to imagine that, in supporting the favourite son of the reigning monarch and the idol of the people against a rival who was dreaded as a tyrant and hated as a papist, he might count upon success. Monmouth had been educated at Oxford under a tutor named Ross. This man, finding in his pupil those sparkling qualities which command popularity, resolved to attach himself to his fortunes. Young, handsome, brave, and generous, ever courting the people and always hailed by them with acclamations, Monmouth wanted but the shadow of a claim to legitimacy. This his tutor resolved to supply. He tried to gain over Cosin, Bishop of Durham, to affirm that he had solemnized a private marriage between Lucy Walters, the mother of the duke, and the king; and to deposit a certificate of such marriage in a box in his own house. The bishop revealed the circumstance to the king; but, dying soon after, Ross declared that he had left behind him such a certificate, and that it still existed in the possession of Sir G. Gerrard, who kept it in a certain black box.

Shaftesbury readily turned this contrivance to his own purpose; the statement was confidently made and implicitly believed: but the king dis-

covered an affection for his brother which had not A.D. 1681. been anticipated ; he said that, much as he loved James (his son), he would rather see him hanged than named as his successor ; and he took immediate measures to stop the progress of the rumour about the “ black box,” by positively and publicly declaring Monmouth’s illegitimacy.

The ardent young man was not however readily brought to resign the prospect of a crown. Shaftesbury was always ready to excite his ambition and to sustain his hopes ; he took care that the story of the private marriage should not die away ; and the people were occasionally excited by some fresh evidence either ready to be brought forward or lately industriously suppressed. During the king’s sickness at Windsor, the duke had slept every night in the city at the house of a Mr. Bateman, a surgeon and a confidant of Shaftesbury, where arms were always ready. Every preparation was made, and Shaftesbury declared he had several thousand “ brisk boys ” ready to rise immediately he gave the word. The king’s recovery frustrated this design ; but the proceedings of the lords at the Oxford parliament gave occasion for another.

Shaftesbury was delighted at the variance which the impeachments against Lord Danby and Fitzharris had created between the houses ;

A.D. 1681. he at least anticipated a dissolution, and proposed to his party the decisive step of continuing to sit in defiance of the king. Charles was however more prompt than they anticipated, and the dissolution came before their plot could be matured. It was not through any irresolution in Lord Shaftesbury that the project failed. Even now, unfavourable as was the moment, he gathered his supporters in the upper house, and kept them there under the pretence of signing a protest. For nearly an hour after the dissolution, messengers were continually despatched to the commons to tell them that the lords remained, and exhorting them to a like fulfilment of their promises. But the king had a large force about Oxford, and the followers of the members were rather a showy than an effective force. They were afraid, to use Lord Grey's own expression, that if they did not disperse, the king would come and pull them out by the ears: one by one they dropped off until each feared to be the last, and the house was then precipitately deserted. Shaftesbury had now nothing left but to follow their example. The peers also left their house, and the opportunity was lost.¹³¹]

¹³¹ Lord Grey's Secret History of the Rye-house Plot.

In order to render the usurpations of the king less dangerous, and to render him more safe in the exercise of his assumed arbitrary power, every art was made use of by the court to foment the divisions among the people. The church party, in particular, were continually alarmed with the dangers they were exposed to from the nonconformists. The pulpits rang with these dangers; and many of them were prostituted so far, as to revile the Earl of Shaftesbury as the great inflamer of the nation. By these means the zealots for the Establishment were engaged to promote with eagerness the views of the crown, without reflecting how much greater injuries they must be liable to from the prevalence of the Duke of York and the papists than they possibly could receive from the protestant dissenters.

A.D. 1681.

Artifices of
the court to
divide the
people.

[It certainly is an honourable testimony to the activity and usefulness of Shaftesbury, that all the Tory pamphlets of this time denounce him as the great agitator without whose baneful presence all opposition would be at an end. The fury of the party could find no expression adequate to its violence. To "Mephistophiles," "the fiend," and "Alderman Shiftsbury," was now added the title of Count Tapski. The substance

A.D. 1681. of this name was derived from the operation of tapping, which the complaint arising from his accident in Holland rendered it necessary that he should submit to; its termination, and the title of count, from a ridiculous story which was put out that he had expected to be chosen king of Poland. This story was in no slight degree kept alive by a whimsical pamphlet, published about this time, pretending to give an account of his election as King of Poland. The author enumerates all Shaftesbury's party as officers of state under the new king; and among these we find Dryden, then a Whig and a Protestant. This pamphlet is still preserved in the Somers' Tracts.]

Lord Shaftesbury apprehended.

The court was now become triumphant, and determined to proceed with vigour against the persons who had stood up in the cause of public liberty. Among these persons, Lord Shaftesbury was the principal and the most obnoxious: accordingly, on the 2nd of July 1681, he was apprehended at Thanet House in Aldersgate Street; his papers were seized, and he himself was carried to Whitehall, whither the king had come from Windsor by ten o'clock in the morning.

Examined by the king and council.

Upon his examination before the king and the council, he requested that the witnesses who had

sworn against him might be confronted with him A.D. 1681. and examined *ore tenus*: he desired likewise that the lords of the council would consider the quality of the evidence; and he appealed to them whether any of their lordships actually believed the truth of the depositions against him. He asked them whether they judged him so void of prudence as to treat with such persons about matters of so dangerous a concernment; if they did, they must think him more fit for Bedlam than the Tower. There was nothing found among his papers which could possibly be laid hold of, except the draught of an association.* A vote for an association had passed in the house of commons, and had been proposed in the house of lords. However, the draught now found did not appear to be Lord Shaftesbury's; and Bishop Burnet himself says, that "it was neither writ nor marked in any place with his hand: but when

* The corporations having afterwards. The addresses been modelled to the king's were generally presented to mind, addresses were sent up the king at Windsor, and the from most of them, declaring persons who presented them an abhorrence of the principles contained in the association; and Lord Shaftesbury were commonly knighted; upon which Lord Shaftesbury used to call them the poor knights was pelted at in the Gazettes, of Windsor. almost constantly, for a year

A.D. 1681. there was a talk of an association, some had formed this paper and brought it to him ; of which he always professed, after the matter was over, that he remembered nothing at all. So it is probable that, as is ordinary when any great business is before the parliament that zealous men are at the doors with their several draughts, this was one of these cast carelessly by, and not thought on by him when he sent his more valuable papers out of the way."

And committed to the Tower.

As he was conducted to the Tower, great crowds of people ran out to see him, and saluted him with their wishes and prayers for his prosperity.¹³² One among the rest cried out, "God bless your lordship, and deliver you from your enemies ;" to whom he replied, with a smile, "I thank you, sir, but I have nothing to fear ; they have : therefore pray to God to deliver them from me." Two or three days after he was committed, one of the popish lords, pretending surprise at seeing him there, asked him what had brought his lordship thither ? he answered, "that he had been lately indisposed with an ague, and was come

¹³² In Macpherson's extracts from the Life of James the Second, it is asserted that the people hooted Shaftesbury as he was led to the Tower.

to take some jesuits' powder." Thus did he pre-
serve his cheerfulness of mind, and retain his
equanimity in every exigency.¹³³ A.D. 1681.

¹³³ This anecdote is taken from a small tract in the Harleian Miscellany, called, "Memoir of the Life and Death of the Earl of Shaftesbury," published immediately after his death.

CHAPTER IX.

Lord Shaftesbury's attempts to obtain his freedom under the Habeas Corpus Act.—Their Failure.—He indicts Warcup and his agents for Perjury.—Attempts of the Court to bribe Witnesses to accuse him.—Captain Wilkinson.—Trial of College, the Protestant joiner—succeeded by that of Shaftesbury.—The Grand Jury ignore the bill against him.—Joy of the Country at his Acquittal.

A.D. 1681. **As** soon as Lord Shaftesbury was committed to the Tower, the popish party exerted themselves to spread among the public a persuasion of his guilt. For this purpose, letters from unknown hands, and without names, were sent to several persons, exhorting them to secure and convey away their papers. The following is a copy of one of these letters.

Attempts to persuade the public of Lord Shaftesbury's guilt.

“ MR. GIBBS,

“ My Lord Shaftesbury being just committed to the Tower, and Sir Thomas Player under examination before the king and council, and seve-

ral warrants out against several of our dearest friends, and now all like to be discovered, I was desired by his lordship to give warning to all his friends, and particularly those in Wapping, to secure all papers and things, &c.; of which I desire you to give notice to so many as you can think, that they nor you may be surprised: being in more haste than ordinary, have only time to subscribe myself,

“ Yours in all secrecy,

“ J. T.

“ Whitehall, July 2, 1681.

“ Your name is in the list with others of your neighbours.”

Lord Shaftesbury had been committed only upon general informations, which were procured by, and taken before, Justice Warcup, a person who, by several infamous proceedings, had long rendered his name and character justly hateful to the public. In the year 1666, a complaint had been preferred against him by Lord Arlington for making use of his name without his knowledge in a scandalous transaction; and, the truth of the accusation being proved, the king in council had ordered him to be committed to

Justice
Warcup
employed
against
Lord Shaftesbury.

A.D. 1681. the Fleet. He was at the same time put out of the commission of lieutenancy, banished for ever from the court, and the Duke of York declared that he would dismiss him from his service. In a few weeks, however, upon Warcup's submission to Lord Arlington, and asking pardon on his knees, he was discharged from prison, and soon restored to be a justice of the peace. To this man, who was ready to execute any scheme of iniquity, was entrusted the procuring of witnesses, and their instruction as to what they were to allege against Lord Shaftesbury.

Lord Shaftesbury's applications to the sessions at the Old Bailey.

When the sessions of oyer and terminer for London began at the Old Bailey, July the 7th, 1681, his lordship, who had been kept ignorant of the crimes sworn against him, petitioned the court, agreeably to the habeas corpus act, that he might be brought to his trial, or bailed; and on the last day of the same sessions, as no indictment had been preferred or proceedings entered into against him, he moved by his counsel that he might be bailed, or set at liberty, according to law. This the Lord Chief Justice Pemberton refused, under pretence that the Tower of London was not within the limits of the commission granted to the court of sessions.

Lord Shaftesbury, being unwilling that this

denial should become a precedent for eluding the habeas corpus act, made, at the next sessions at the Old Bailey, September the 5th, 1681, by another petition, a second claim of right; and set forth that he was still wrongfully detained a prisoner, and therefore prayed to be tried or set at liberty according to law; and there being as yet no indictment, or any kind of proceeding against him, on the last day of the sessions he moved again by his counsel to be released. But the Chief Justice Pemberton refused it as before, and for the same reason;¹³⁴ though Sir Patience Ward, who was then lord mayor, declared it to be his opinion that the Earl of Shaftesbury was entitled to his discharge, and said he left it to the chief justice to answer for the refusal.

A.D. 1681.

He is repeatedly denied relief by Judge Pemberton.

Lord Shaftesbury, determined to continue his claim, exhibited, at the next sessions at the Old Bailey, October the 10th, a third petition, to the same effect with the two former; and, though still there was no indictment, the Chief Justice Pemberton refused to bail or set him at liberty.

¹³⁴ Pemberton well deserves to share that immortality of infamy which attaches to the names of Scroggs and Jefferies. The seventh volume of the State Trials affords dreadful proofs of his readiness to sacrifice the victims who were brought before him either to king or people.

A.D. 1681.

He applies
in the same
manner to
the sessions
at Hicks's
Hall,

without
success.

Bills of in-
dictment
against
Warcup
and others.

To obviate the pretence that the Tower of London was not within the limits of the city, the earl at every one of these sessions petitioned likewise, in the same manner, the justices of the peace at the sessions held for Middlesex at Hicks's Hall; where they always have a commission to inquire of any matters committed in the county of Middlesex, though they never read it, except it be required by some particular occasion: but Sir William Smith, who ruled the bench there, positively refused to read the commission, or to grant him any relief.

At the sessions held at the Old Bailey, September the 5th, 1681, four bills of indictment were offered against Edmund Warcup the justice, John Smith, John Macnamara, and Bryan Haynes, for subornation of perjury. The witnesses to these indictments were all in the court, that they might be sworn in order to their attending the grand jury. The court being informed by the clerk of the sessions that such bills were delivered to him, the chief justice, as is usual, called for the witnesses to be sworn; but one of the king's counsel standing up, and speaking privately to him, he ordered the indictments to be laid aside till the next day. The solicitor

in that business, and other gentlemen who were A.D. 1681.
concerned in the management of it, humbly
moved the court that, since their witnesses were
all ready, they might not be put off, but sworn
presently ; upon which the chief justice, in great
anger, demanded who those were that took upon
them to direct the court, and told them they
might attend the next day, which they submitted
to, and attended accordingly.

When the indictments were offered again to
the court, Pemberton asked what those indict-
ments were, and ordered one of them to be read.
The substance of it was, “that there being a
popish plot to destroy the king, government,
and protestant religion, and to introduce popery
and arbitrary power, for which divers persons had
been found guilty and were executed, Edmund
Warcup, knowing the truth of the premises, did
entice several witnesses, take off their evidence
against the papists, and, by promises of great
rewards, did persuade them to swear falsely
against divers protestants, and particularly against
the Earl of Shaftesbury, &c.” The chief justice,
starting up in great heat, said, “that these indict-
ments were not to be admitted for many reasons.”

Rejected by
Pemberton.

The first of these reasons was, “that, if any

A.D. 1681. persons accused of crimes should have liberty to indict the witnesses, it would be a means of destroying all evidence, and be a precedent for felons and burglars to escape punishment." It did not, however, appear to the court that the persons against whom the indictments were offered were witnesses against Lord Shaftesbury, for there had been no proceedings against him in that court; not to mention that a clear proof of subornation of perjury must have been a sufficient reason for excluding a man from giving his evidence in any cause.

Pemberton's second reason for not admitting the indictments was, "because the presenting of them was a popish design to destroy all the king's evidence, and put an end to the popish plot."

His strange
conduct.

The third, which he gave with great passion, was, "that in those indictments the king's name was used before the attorney-general had given his consent to it, without whose leave he declared that they ought not to be admitted;" and this the attorney-general, who was in the court, refused to grant.

It was certainly very extraordinary to refuse Lord Shaftesbury, and other men of character, the liberty of using the king's name in a crimi-

nal proceeding in a court of justice, when the meanest subject had an undoubted right, by the law and custom of England, to do it in any process for redressing abuses, whether against the community or particular persons. Neither had it been ever known to be in the power of the attorney, or any other officer of the law, to prevent or hinder it; since it must necessarily enable him to obstruct in a great measure the justice of the kingdom, and direct in what channel it should run; as, by a parity of reason, the attorney's consent ought to be asked to all indictments, at all the assizes and sessions, in every county of England. However, on these unjustifiable grounds, a stop was put to any prosecution upon the indictments brought against Warcup and his accomplices.

Three other indictments were likewise prepared against David Fitzgerald, Edward Ivey, and Bernard Dennis, for the same crime committed in Middlesex. When that against Fitzgerald was tendered to the court sitting at Hicks's Hall, Sir William Smith, Pemberton's representative and echo, ordered it to be openly read, and then, under a pretence of great care, he took time, till the next day, to consider and advise

A.D. 1681.

Indictment
against
David Fitz
gerald.

A.D. 1681. about it. When the next day came, Adderley, the clerk of the peace, had mislaid the indictment, and it was never afterwards to be found. But the witnesses to it, while they were attending to be sworn in order to give evidence to the grand jury, were arrested by a private order of the court, and hurried to gaol, where, till the danger of the indictments was over, they were held to such unreasonable bail as could not be procured for their deliverance.

mislaid by
the clerk of
the peace.

The wit-
nesses im-
prisoned.

Determina-
tion of the
popish
party with
regard to
Lord
Shaftes-
bury.

The popish party at court had, for some time, resolved to confine the Earl of Shaftesbury, and to continue him in confinement, with the hope of finding proof against him; and they were resolved to make it, if they found none. That this design had been long concerted, appeared from the affidavits of some captains of ships, and others, who had been in France; and who, at St. Malo's and different parts, had heard of his commitment before it happened.

Methods
used to get
evidence
against
him.

As the ministry were not provided with sufficient evidence against Lord Shaftesbury, they were forced to take the extraordinary methods already mentioned to keep him in confinement till they had succeeded in their endeavours to gain such witnesses as would answer their purpose.

With this view they made particular application to one Captain Wilkinson, who, being at that time in prison, was looked upon as a person who might be rendered subservient to their designs. This gentleman, who had the character of being a brave and honest old officer, had served King Charles the First in the civil wars; and King Charles the Second, both at and after the Restoration. Meeting, however, with no recompense for his services, after a long attendance at court, he was going with his family, and a great number of servants, to North Carolina, of which colony he had been appointed governor by Lord Shaftesbury and the rest of the proprietors. By a delay of his voyage, after a vessel had been hired to transport him, he was involved in a debt for demurrage of the ship, arrested, and thrown into prison.

A.D. 1681.

 Case of
 Captain
 Wilkinson.

Many attempts were used to suborn him against the Earl of Shaftesbury;* and an estate of five hundred pounds a year in Ireland, belonging to the Duke of York, was offered him if he would

* The information of Captain Henry Wilkinson of what passed betwixt him and some other persons, who have at-

tempted to prevail with him to swear high treason against the Earl of Shaftesbury.—London: printed for H. Wilkinson, 1681.

A.D. 1681. become an evidence. When promises could not prevail upon him, recourse was had to threatenings ; and at a close and severe examination which he went through before the king, the two secretaries of state, and several lords of the council, every method both of allurements and terror was applied to bring him to a compliance with the views of the court. He was proof, however, against all attacks ; and persisted in declaring that he had no treason to allege against Lord Shaftesbury. In his printed information are these words :

“ My lord chancellor would not believe but I must be guilty of knowing great things against my Lord Shaftesbury. I told him, if I could not be believed upon my word there, if they pleased to bring my Lord Shaftesbury upon his trial, I would declare in open court upon oath what my knowledge was, without any hopes of gain or advancement. My lord chancellor, I thank him, did me that equity to tell me, there were two sorts of advancement ; I need not give myself that trouble ; for I was like to come to my trial myself before my Lord Shaftesbury.”

Bishop Burnet allows,* that all this summer

* Burnet's History, vol. i. p. 506.

“there was strange practising with witnesses to find more matter against him. The court had found out two solicitors to manage such matters, Burton and Graham; who were, indeed, fitter men to have served in a court of inquisition than in a legal government.”

A.D. 1681.

Declaration
of Bishop
Burnet.

To prepare and season those witnesses whom the ministry had found out, in order to be employed against Lord Shaftesbury, Stephen College was tried at Oxford for treasonable words which he was charged with having spoken in that city. This man who, along with other persons, had attended the lords and city members to Oxford, had distinguished himself by the warmth of his zeal against popery; so that he was, in derision, commonly called the Protestant Joiner. At his trial, his memorandums, and the instructions that he had for his defence, were taken from him; notwithstanding which, he pleaded his cause with great ability, sagacity, and resolution.

Stephen
College
tried,

“It is not possible,”* says Rapin, “to read the particulars of this trial, the partiality of the judges, and the depositions of the witnesses, without discovering a settled design for the destruction of this man, who was condemned and executed as a traitor.”

and execut-
ed.

* Tindal's Rapin, vol. ii. p. 724.

A.D. 1681.

[The design of the court in this instance, however, signally failed. The London grand jury threw out the bill, and the crown lawyers were obliged to remove the prosecution to Oxford. There it was not difficult to find a jury whose loyalty would be proof against any evidence for the defence, or any demonstration of the infamy of the witnesses for the prosecution. They convicted College of course: but the proceedings could not be prevented from becoming public; and the intrepid mechanic so terribly battered Charles's pack of hack perjurers, that they were, by their own confession, rendered useless for any future service.]

Indictment
for high
treason
against
Lord Shaf-
tesbury.

On the 24th of November, a bill of indictment for high treason was preferred against Lord Shaftesbury. The grand jury consisted of some of the most eminent merchants and citizens of London, of whom Sir Samuel Barnardiston was the foreman. The two chief justices were present, and there was as great a concourse of people of distinction and substance as had ever assembled together in a court of judicature. The grand jury desired that they might examine the witnesses in private; alleging that it had been the constant practice of their ancestors and prede-

Grand
jury's rea-
sons for de-
siring to
examine the
witnesses in
private.

cessors, and insisting upon it as their right, because they were bound to keep the king's secrets, which they could not do if the examination was in open court. It was farther urged by them, that, in the freedom of a private examination, discoveries were sometimes made of persons having been guilty of treason, and misprision of treason, who were not known or thought of before; whereas, in a public examination, intimation might be given to these persons before they could be secured, by which means they would make their escape. To all this it was added, that the whole evidence would be known before it came to its principal trial by the petty jury. These reasons were overruled by the court; but the grand jury desired it might be recorded, that they had insisted on it as their right to examine the witnesses in private. A.D. 1681.
Overruled.

The reason of this public examination was obvious. It was intended to prevent the grand jury from discovering any suspicions they might have that the evidence against Lord Shaftesbury was suborned. The judges, in the course of the examination, very frequently and partially checked the jury; and, as far as they could, supported the witnesses, who, however, plainly appeared to be Partiality
of the
judges.

A.D. 1681. men of no credibility and of the most infamous characters.

As the proceedings relative to this affair are printed at large in the State Trials, the reader may thence be able to make his observations upon them. The grand jury perceived, upon examination, that the paper containing the form of a projected association was not written in Lord Shaftesbury's hand, and that the depositions of the witnesses abounded with improbabilities; and therefore the bill was returned *ignoramus*.

The bill
returned
ignoramus.

Joy at Lord
Shaftes-
bury's ac-
quittal.

The audience, though in a court of justice, immediately broke forth into the loudest acclamations, which were soon echoed through the city. As Lord Shaftesbury had long stood at the head of the opposition and in the front of danger, his was looked upon as the common cause and the cause of liberty. The public joy for his acquittal was testified in every part of the city by the ringing of bells, bonfires, and drinking his health, with prosperity to the protestant religion and the liberties of England.

[Sir John Dalrymple quotes a letter in the State Paper Office, where the writer says, the applause in the court lasted an hour; and every one remembers, that it was the medal struck by

Bowen, the artist, upon this occasion, which pro-
duced Dryden's celebrated satire of the Medal. A.D. 1681.
This medal bore the bust of Shaftesbury, with
his title "Antonio Comiti de Shaftesbury;" and
on the reverse, a sun obscured by a cloud rising
over the Tower and City of London. Under-
neath was inscribed the date upon which the
bill was ignored, (24th November 1681,) and a
motto "LÆTAMUR."

Immense numbers of these medals were quickly
disposed of; the Whigs wore them as a badge of
distinction, and the frequency of their appearance
showed the strength of the party. Charles was
enraged at his defeat: when he heard the failure
of his prosecution, he exclaimed with bitterness,
"It is a hard case that I am the last man to have
law and justice in the whole nation."*

He was yet smarting under the recollection
of the plaudits so honourable to Shaftesbury, so
insulting to himself, when he recollected the
keenness of the satire with which Dryden had
already smote the opposition leader, and he de-
termined to employ his laureat to strike another
blow at the popular idol.

Spence relates the anecdote thus:—"It was

* Reresby's Memoirs.

A.D. 1681. Charles the Second who gave Mr. Dryden the hint for writing his poem called 'The Medal.'— One day as the king was walking in the Mall, and talking with the poet, he said, 'If I was a poet, (and I think I am poor enough to be one,) I would write a poem on such a subject in the following manner;' and then gave him the plan for it. Dryden took the hint; carried the poem, as soon as it was written, to the king; and had a present of a hundred broad-pieces for it. This," continues Spence, "was said by a priest whom I often met at Mr. Pope's, who seemed to confirm it; and added, that King Charles obliged Dryden to put his Oxford speech into verse, and to insert it towards the close of his 'Absalom and Achitophel.'"

Dryden dedicated this poem to the Whigs, and in his epistle upon this occasion he says, "I have only one favour to desire of you at parting, that when you think of answering this poem, you would employ the same pens against it, who have combated with so much success against Absalom and Achitophel, for then you may assure yourselves a clear victory without the least reply. Rail at me abundantly; and not to break a custom, do it without wit." The advice was

faithfully followed ; the answers were as numerous and as dull as the poet could desire.] A.D. 1681.

When word was carried to Lord Shaftesbury that the jury had returned the bill *ignoramus*, the messenger found him playing at cards with his countess.

The ministry were so conscious of the injustice of the prosecution, and so angry at their disappointment, that they used their utmost endeavours to stifle all accounts of it. A messenger, and the wardens of the company of Stationers, went to the several printing-houses, requiring them to publish nothing in favour of the Earl of Shaftesbury, or in justification of the *ignoramus* which had been brought in by the grand jury upon the bill that was preferred against him. The resentment of the court.

The printers were easily intimidated ; and the more, as one Francis Smith, a bookseller, had been tried, convicted, and deeply fined, for having caused Lord Shaftesbury's speech, entitled, "The Speech of a noble Peer, &c." to be printed and published.

[But, notwithstanding the menaces of the court, the field was not entirely left to the Tory pamphleteers. Benjamin Harris, the great Whig publisher of the day, put forth many tracts which

A.D. 1681. were extensively circulated and eagerly read; many of these are preserved in Lord Somers' collection. There is one series which particularly appears to have proceeded from the press with the cognizance of Lord Shaftesbury, if not from his pen. It began by a pamphlet called "A Letter from a Person of Quality to his Friend, about Abhorrors and Addressors." The paper found in Shaftesbury's possession had called forth a new set of abhorrors. Among the foremost of these I am sorry to find the Middle Temple, headed by Saunders, one of the counsel against Lord Shaftesbury, and the most profound and profligate lawyer of his day. This society declared at the foot of the throne, that "the execrable paper produced against the Earl of Shaftesbury contained most gross and apparent treasons, more manifestly tending to the ruin of his majesty's dominions than the old hypocritical solemn league and covenant; and that whosoever promoted that rebellious association designed by the said paper, or countenanced the same by refusing upon full evidence to find bills of indictment against the authors and promoters thereof, had perverted the laws, and could have no other design thereby than to usurp to themselves an arbitrary and

tyrannical dominion, not only over his majesty's A.D. 1681. subjects, but over his majesty also.¹³⁵

This address is characterised in the "Letter from a Person of Quality," as "contrary not only to the law of the land, but to the law of all nations, sense, and reason." The letter is very

¹³⁵ The following is a copy of this celebrated paper:—"I, A. B. do in the presence of God solemnly promise, vow, and protest to maintain and defend to the utmost of my power, with my person and estate, the true protestant religion against popery and all popish superstition, idolatry, or innovation, and all those who do or shall endeavour to spread or advance it within this kingdom.

"I will also, as far as in me lies, maintain and defend his majesty's royal person and estate; as also the power and privilege of parliaments, the lawful rights and liberties of the subject, against all incroachments and usurpation of arbitrary power whatsoever; and endeavour entirely to disband all such mercenary forces as we have reason to believe were raised to advance it, and are still kept up in and about the city of London, to the great amazement and terror of all the good people of the land.

"Moreover, J. D. of Y. having publicly professed and owned the popish religion, and notoriously given life and birth to the damnable hellish plots of the papists against his majesty's person, the protestant religion, and the government of this kingdom; I will never consent that the said J. D. of Y. or any other who is or hath been a papist, or anyways adhered to the papists in their wicked designs, be admitted to the succession of the crown of England; but by all lawful means, and by force of arms if need so require, according to my abilities, will oppose him, and endeavour to subdue, expel, and

A.D. 1681. short, but it called forth some much longer and more violent answers.

It would be tedious to enumerate the tracts which this controversy produced, and it is impossible to pronounce which of them were written or corrected by Shaftesbury; but at that

destroy him, if he come into England, or the dominions thereof, and seek by force to set up his pretended title, and all such as shall adhere unto him, or raise any war, tumult, or sedition for him or by his command, as public enemies of our laws, religion, and country.

“To this end, we and every one of us, whose hands are here underwritten, do most willingly bind ourselves and every one of us unto the other, jointly and severally, in the bond of one firm and loyal society or association; and do promise and vow before God, that with our joint and particular forces we will oppose and pursue unto destruction all such as upon any title whatsoever shall oppose the just and righteous ends of this association, and maintain, protect, and defend all such as shall enter into it in the just performance of the true intent and meaning of it. And lest this just and pious work should be anyways obstructed or hindered for want of discipline and conduct, or any evil-minded persons, under pretence of raising forces for the service of this association, should attempt or commit disorders, we will follow such orders as we shall from time to time receive from this present parliament whilst it shall be sitting, or the major part of the members of both houses subscribing this association when it shall be prorogued or dissolved; and obey such officers as shall by them be set over us in the several counties, cities, and boroughs, until the next meeting of this or another parliament; and will then show the same obedience and submission unto it, and those who shall be of it.

time the support of the literary warfare was no A.D. 1681.
 inconsiderable portion of the duties of the chief
 of either party, and doubtless very few of these
 manifestoes were sent forth to the public until
 they had passed under his eye.]

As the earl saw the resentment of the court
 so strongly pointed at him, he had some time
 before* settled his estate in such a manner as

The earl
 settles his
 estate.

* Bishop Burnet says, "his family would have been ruined, if he had not betrayed his party." But it is certain that the bishop knew nothing of the first part of this assertion, and that he does not give the least proof of the latter: nor does there appear one single instance of Lord Shaftesbury's having ever betrayed or ever accused any person. His flight to Holland is a plain indication that he did not; for it is not to be thought that a man of his understanding would have betrayed his party, without making terms for himself. Indeed, the bishop himself answers this charge, by what he says a line or two before, "that Lord Shaftesbury was to the last much trusted by all the discontented party."

"Neither will we, for any respect of persons or causes, or for fear or reward, separate ourselves from this association, or fail in the prosecution thereof during our lives, upon pain of being by the rest of us prosecuted and suppressed as perjured persons and public enemies to God, the king, and our native country.

"To which pains and punishments we do voluntarily submit ourselves, and every one of us, without benefit of any colour or pretence to excuse us.

"In witness of all which premises to be inviolably kept, we do to this writing put our hands and seals, and shall be most ready to accept and admit any other hereafter into this society and association."

A.D. 1681. would prevent his family from suffering, whatever might happen to himself. He granted at the same time copyhold estates, during their lives, to several of his servants whom he had found faithful to him; and some of these servants enjoyed them many years.

Sir John
Hawles's
remarks on
the return
of the bill.

Sir John Hawles makes the following remark upon this return of the bill against Lord Shaftesbury. "The grand jury* (though some of them afterwards smarted for it upon other pretences) did like honest understanding gentlemen; and had they done otherwise, to avoid the ignominy of being called (though, in truth, it was an honour to be) an Ignoramus jury, they had justly deserved the reproach which since has lighted on other juries, such as Mr. Cornish's and the like."

Sir John makes, likewise, the following remark. "Could any person who knew my Lord Shaftesbury, or that had heard of or believed his character to be what it was, believe that it was possible for him to discourse with the witnesses at the rate they swore? to some of them at the first, to others of them the second time he saw them; to discourse of matters of policy with Booth at one time, afterwards with Haynes,

* State Trials, vol. iv. p. 184.

and afterwards with Macnamara; fellows of so A.D. 1681.
 little sense, that he would have been ashamed
 to have entertained them in the meanest office
 about him; and yet, as they pretended, he makes
 them his privadoes in the secret, of not so much
 what he would have them, but of what he in-
 tended himself, to do."

"The earl, being cleared by the grand jury, Lord Shaftesbury en-
 deavours to
 prosecute
 his ac-
 cusers.
 moved to be discharged; but could not obtain
 it till the end of the next term. When he was
 at liberty, he prosecuted Graham and his ac-
 cusers, as his declaration sets forth, 'for conspir-
 ing to indict him of high treason, for which they
 solicited Wilkinson to give false testimony against
 the said earl, &c.' The defendants moved that
 they might not be tried in London, because the
 sheriffs, Mr. Pilkington and Mr. Shute, were
 Lord Shaftesbury's friends. The judges allowed
 their plea; but the earl would not try his cause
 elsewhere." *

When the judges had made an order, that the Is not per-
 mitted to
 try them by
 a Middle-
 sex jury.
 earl should show cause why the trial should not
 be in another county, he appeared in court him-
 self, and declared it was his desire to have it tried
 by an indifferent jury, and that it might be tried

* Kennet's History, vol. iii. p. 390.

A.D. 1681. that term by a Middlesex one; for he thought an indifferent jury might as well be had there as in any other county in England. When he could not obtain this, he declared to the court, that, since he could not have the undoubted privilege of a peer and an Englishman to lay his action in any county of England, he would remit it at present, and wait for a better opportunity to revive it.

Declines
prosecuting
them in any
other
county.

The reason
of his con-
duct.

Lord Shaftesbury's reason for not trying the cause in another county is very apparent. "Since the dissolution of the last parliament, all the magistrates,* judges, justices of the peace, governors, and lord lieutenants had been changed, and the most violent Tories put in their places." Most of the corporations were, by this means, entirely in the hands of the court; and they were directed to send up addresses, declaring their abhorrence of the association, and the principles upon which it was founded. "The pulpits † resounded with the doctrine of passive obedience and non-resistance. The clergy seemed to make it their business to surrender to the king all the liberties and privileges of the subjects, and to leave them only an unlimited obedience. Ac-

* Rapin.

† Ibid.

according to the principles publicly preached, no A.D. 1681.
Eastern monarch was more absolute than the
King of England. This doctrine was supported
in the courts of justice by the judges and lawyers
to the utmost of their power."

The court had acted with great art in one par-
ticular. It had suffered the corporation and some
other acts to lie, in a great measure, dormant for
some years; by which means the people, who
are seldom struck but with immediate dangers,
lost their apprehensions of them, and were not
alarmed at the strength which they had added to
the crown. These were now put in execution,
and the court had modelled the corporations to its
mind.

The court
carries
things with
a high
hand.

Its next design was upon the city of London,
which was the centre of liberty. The lord
mayor, Sir John Moore, was a creature of power,
and had been one of those who had joined in ex-
pressing their abhorrence of the petitions for the
sitting of parliament. By his influence, and the
directions and assistance which he received from
the ministry, he forcibly and illegally procured
two sheriffs to be elected contrary to the votes of
a great majority of the citizens. He obstructed
the poll which was taken for the two other can-

A.D. 1681. didates, one of whom was Mr. Papillon, who had been of Lord Shaftesbury's grand jury. Upon this, the court openly triumphed, and resolved to resume the charter of the city and of other obnoxious corporations.

Lord Shaftesbury saw the storm coming on. The crown was armed with sufficient power, and the judges were devoted to its most arbitrary measures. The ministry were provided with evidence ready to attest whatever they prescribed; and they had now secured sheriffs, and consequently juries, for their purpose. In this state of things, the earl thought it proper to keep himself retired, and accordingly he removed from his own house to a place of concealment.

Lord
Shaftes-
bury thinks
resistance
necessary.

Though Lord Shaftesbury knew himself to be the principal object of the resentment of the court; though he was much afflicted by the gout, and by a general weakness of body which was the consequence of that disorder, the greatness of his spirit never abated. His mind continued as active and vigorous as ever. He saw that the king was determined to govern, during the rest of his life, without a parliament and upon the most arbitrary maxims. He saw that the influence of the Duke of York was greater than

ever, and that this influence produced the most A.D. 1681.
pernicious consequences. He thought that the
constitution was already invaded in some essential
points, and he believed that it would be totally
destroyed upon the duke's accession to the
crown. In this situation of things, therefore, he
looked upon it as right and necessary to save the
nation by force, since it could not be done in a
parliamentary way.

CHAPTER X.

Shaftesbury attempts to excite an Insurrection. — His Views and Plans. — Necessity of despatch. — Caution of his Friends. Ruin of the design. — Flight of Shaftesbury. — His reception in Holland. — His Death.

A.D. 1681.

Proposes to the country party to make use of force.

LORD SHAFTESBURY now proposed to several of the lords and gentlemen of the patriotic party, that they should make a stand for the religion and the liberties of their country. He advised that nothing should be done injurious to the person of the king or a monarchical government; and that their chief object should be to provide a security against the succession of the Duke of York: nor did he doubt but that the king would presently hear them, when they offered to speak to him in a more effectual manner.

[Shaftesbury was now living in obscurity, and in momentary dread of being seized by the emissaries of the court. Any plot, therefore, in which he could act a part, must be promptly formed and immediately executed. He thought the

moment was favourable to the attempt; Mon- A.D. 1681.
mouth was in Cheshire, where he had a strong
body of partisans ready to rise in his favour
immediately he called them forth. The news of
such an attempt would necessarily cause the king
to weaken the force in the metropolis, and
Shaftesbury was prepared to seize the emergency.
Walcot, West, Rumsey, and Ferguson, despera-
does or fanatics indeed in their individual cha-
racters, were invaluable instruments in a master
hand. These men had enlisted and armed bands
of men who were eager to move, and ardent in
the cause of patriotism or plunder. Such a con-
spiracy could not be delayed without a certainty
of discovery; it was necessarily known to an
immense number of persons; and Shaftesbury was
in an agony of impatience while his more cau-
tious friends were debating upon the danger of
the project, and waiting for opportunities never
likely to occur. Unable himself to appear at
their meetings, he sent frequent messages to urge
them to despatch, until Monmouth and Russell
dreaded lest he should make some abortive at-
tempt, relying upon the city alone.]

They objected to him the difficulty of the un-
dertaking, the great power of the crown, and the

A.D. 1681. hazard of their being cut in pieces by the guards before they could form sufficient forces. In answer to their objections, he told them that the crown had lost its natural strength, which was the affection of the public; and he proposed that attempts should be made in so many and in such distant places at once as would confound the counsels of the court, separate its forces, and animate the people. He declared that he would head the first party himself; and jesting on his infirmities told them, they were sensible he could not run away, and they should see that he knew better how to die at the head of the people, fighting for their liberties, than on a scaffold.

His proposal not agreed to.

When he could not prevail on them, he cried out, with a kind of prophetic fire, "that the papists should never triumph over him, whatever they might over them; and that he was afraid he should leave them to be haled away in triumph to gaols and gibbets, and to die by the axe and the halter."

There was such a spirit of liberty at that time in the nation, such a dread of the Duke of York, and such an aversion to the popish religion, that the country party might probably have succeeded in the design of rousing the people; by which

means the king might have been obliged to call A.D. 1681.
a new parliament, and to agree in passing a bill
of exclusion.

[It is true that there were far other and more violent designs entertained by some of those whom Shaftesbury had admitted into his counsels. Among them were many turbulent spirits who looked back with regret upon those times of confusion in which they had acted important parts. To these men the most violent measures appeared the most efficacious, and they contemplated the assassination of the king and his brother as the first step to the reconstruction of their darling scheme of government, a commonwealth. Algernon Sydney held that those who draw the sword against a prince should throw away the scabbard, and this was the general sentiment of the agents Shaftesbury employed in preparing the people for an armed resistance; but, while they acted with him, they were restrained by his authority. The consequences of his flight and subsequent death are thus ably described by Lord John Russell. Speaking of the year 1683, he says: "The year which thus began with the death of Shaftesbury, was nearly fatal to the liberties of England. The surrender of

A.D. 1681. the city's charter, and its renewal on the most abject terms; the decree of the University of Oxford enforcing slavery as a moral and religious duty; the deaths of Russell and of Sydney,—were deep and almost mortal wounds to our constitution.”

“After Shaftesbury was gone, there were held meetings of his former creatures in the chambers of one West, an active, talking man, who had got the name of being an atheist. Colonel Rumsey,¹³⁶ an officer who had served under Cromwell, and afterwards in Portugal; Ferguson, who had a general propensity for plots; Goodenough, who had been under-sheriff; and one Holloway, of Bristol,—were the chief persons at these meetings. Lord Howard was at one time among them. Their discourse seems to have extended itself to the worst species of treason and murder; but whether they had any concerted plan for assassinating the king is still a mystery. Amongst those who were sounded in this business was one Keeling, a vintner sinking in business, to whom Goodenough often spoke of their

¹³⁶ West and Rumsey were afterwards witnesses against Lord Russell. Charles would have thought the destruction of his noble victim cheaply bought by the pardon of a hundred such wretches as these.—Ed.

designs. This man went to Legge, then made Lord Dartmouth, and discovered all he knew. Lord D. took him to Secretary Jenkins, who told him he could not proceed without more witnesses: it would also seem that some promises were made to him; for he said, in a tavern in the hearing of many persons, that he had considerable proffers made him of money, and a place worth one hundred pounds or eighty pounds per annum, to do something for them;* and he afterwards obtained a place in the victualling office by means of Lord Halifax.† The method he took of procuring another witness was, by taking his brother into the company of Goodenough, and afterwards persuading him to go and tell what he had heard at Whitehall.

“The substance of the information given by Josiah Keeling in his first examination was, that a plot had been formed for enlisting forty men to intercept the king and duke on their return from Newmarket, at a farm-house called Rye, belonging to one Rumbold a maltster; and this plan being defeated by a fire at Newmarket, which caused the king's return sooner than was expected, the design of an insurrection was laid;

* Examinations before the Lords, 1689. † Ibid.

A.D. 1681. and, as the means of carrying this project into effect, they said that Goodenough had spoken of four thousand men and twenty thousand pounds to be raised by the Duke of Monmouth and other great men. The following day the two brothers made oath that Goodenough had told them that Lord Russell had promised to engage in the design, and to use all interest to accomplish the killing of the king and duke. When the council found that the Duke of Monmouth and Lord Russell were named, they wrote to the king to come to London; for they would not venture to go farther without his presence and leave. In the mean time, warrants were issued for the apprehension of several of the conspirators. Hearing of this, and having had private information from the brother of Keeling, they had a meeting on the 18th of June at Captain Walcot's lodging. At this meeting were present, Walcot, Wade, Rumsey, Norton, the two Goodenoughs, Nelthrop, West, and Ferguson. Finding they had no means either of opposing the king or flying into Holland, they agreed to separate and shift each man for himself.*

* Life of Lord W. Russell, p. 177.

The scenes that ensued are well remembered. A.D. 1681.
The event too well justified Shaftesbury's restless anxiety for a prompt execution of their designs.]

Whether this scheme was right or wrong in a moral light, the reader will judge for himself. However, we cannot help observing, that in the present enlightened age the question will easily be determined. If Lord Shaftesbury was certain that the constitution was invaded, that the liberties of the people were in the utmost danger, that there was no possibility of securing them by parliament, and that nothing could preserve them but force, he acted upon right principles in advising the having recourse to arms. His principles have since been amply justified by the Revolution; and indeed they cannot be condemned, without condemning at the same time the foundations of British freedom, and the title on which the accession of the House of Hanover to the throne of these kingdoms has been established.

During his concealment, one of his relations, at the instigation of his enemies, gave him some trouble. She had been educated by him, and he had disposed of her in marriage with a fortune of three thousand pounds: he intended likewise to educate her son. However, she preferred at this

A.D. 1682. time a frivolous bill of chancery against him, in order to have him outlawed for want of an answer: but, on the very night in which he left London with a view of quitting the kingdom, he drew up an answer that put an end to the suit.

Lord Shaftesbury resolves to go abroad.

His resolution of going abroad, which was quickly formed and as quickly executed, was owing to the following circumstance.

The circumstance that occasioned his resolution.

Lord Mordaunt (afterwards Earl of Peterborough) had, at his first appearance in the world, conceived a great respect for Lord Shaftesbury, who, being much delighted with the uncommon spirit and vivacity which he perceived in him, took pleasure in conversing with him and giving him advice. This the Earl of Shaftesbury did in such a friendly manner, that Lord Mordaunt was affected with it, became frequent in his visits to him, and always communicated what intelligence he could discover. Lord Mordaunt, to push his interest at court, had entered into an intimacy with the Duchess of Portsmouth. One afternoon, as he was drinking tea with her, word was brought that the king was coming in, and that he was already upon the head of the stairs. The duchess, to hide his lordship from his majesty, locked him up in a closet. While he was there, his curiosity

induced him to kneel down, and look through A.D. 1682. the keyhole, so that he saw everything which passed between the king and the duchess. But, instead of the familiarity which he expected, Lord Howard of Escric entered the room about five minutes after the king. A conversation of two hours ensued, but so low that Lord Mordaunt could not hear one word of it. As soon as the king and Lord Howard were gone, the duchess released him, and, after staying a short time, he begged to be excused a longer visit, having earnest business that would permit of no delay.

As soon as he went down, he got into a hackney coach, drove directly to Lord Shaftesbury, and told him what he had seen. Lord Shaftesbury looked earnestly at him, and desired him to repeat it. After Lord Mordaunt had done so, the earl rose from his seat, and embracing him, said, "My lord, you are a young man of honour, and would not deceive me: if this has happened, I must be gone to-night." Accordingly he left the house he was concealed in without delay, and in a few hours it was searched by the king's messengers.¹³⁷

¹³⁷ I cannot place much dependence upon this anecdote. It was not until Keeling divulged the secret that the plot was

A.D. 1682.

Lord Shaftesbury
quits
London.

Lord Shaftesbury took leave of his countess and his friends in a very tender manner, but without any distraction of mind. He quitted London in the night, disguised in a presbyterian minister's habit, and accompanied by Mr. Wheelock, one of his gentlemen, who was also in a disguise, and passed for his nephew.

Is detained
at Harwich
some days.

His lordship went directly for Harwich, where he was obliged to wait eight or ten days for a fair wind. He and Mr. Wheelock lodged together, and others of his servants were dispersed about the town in proper disguises.

One day, as Mr. Wheelock was dressing himself, and had taken off his black wig, the maid of the house came into the room, and saw him with a fine light head of hair. She immediately told her mistress, who acquainted the earl and Mr. Wheelock with the maid's discovery. As to herself, she said that she did not know, or desire to

discovered, and it is plain that Lord Howard then betrayed his friends only to save himself. If we believe that he was in communication with the king at this time, we must look upon him as a man even more infamous than history now describes him. The meetings at which the circumstances of the proposed insurrection were debated, were held after Lord Shaftesbury's flight, (that was in November, and these were held in January,) and if

know, who they were, and that they might depend upon her silence; but she could not be sure of the maid's, and therefore advised them to leave the house and town directly. A.D. 1682.

Lord Shaftesbury, believing that it was impossible to quit the place with safety, thanked the mistress for her information, and told her he should have no apprehensions from one who had such a sense of honour. "As for the maid," says he, turning with a pleasant air to Mr. Wheelock, "you must go and make love to her, and this may engage her secrecy."

The earl went off from Harwich in a boat, on the 18th of November 1682; and at the same time he sent off two of his servants, in the same dress which he himself wore, in different boats. One of the servants was stopped and secured before he could reach the ship, which contributed to his lord's escape. At that time of the year

He embarks
at Harwich.

we believe this anecdote, must have been well known to, and perhaps contrived by, Charles and his despicable spy. It is however scarcely possible that Shaftesbury should have made a discovery of such vital importance without communicating it to his friends, and equally improbable that they should confide in Howard after such a suspicion. It is to be regretted that no authority is given for this anecdote.

A.D. 1682. the sea was very tempestuous, and some ships that were in company were cast away.

His reception at Amsterdam.

When Lord Shaftesbury arrived at Amsterdam, he was visited by several of the States, and by persons of the greatest quality, who congratulated him upon his escape from his enemies and from the dangers of the seas. One of the burghers, when he welcomed him, said with a smile, "My lord, Carthago nondum est deleta."¹³⁸ The principal men of the city told him, they were sensible that his sufferings were for the protestant cause; that he had been their real friend, and that he had no enemies but who were theirs likewise. They assured him of their constant protection, and for this purpose made him a burghess of Amsterdam. They desired to have his picture drawn, which was hung up in their public room, and showed him all the respect and honours that were in their power.*

* Comme le Prince d'Orange seigneur n'étoit coupable que d'alors, qui a depuis été Roi parce qu'il s'opposoit aux des- d'Angleterre, savoit que ce seins de la cour, il fut bien

¹³⁸ This anecdote is told thus by Seward (after a very erroneous account of his Delenda est Carthago speech: "Before he took refuge in Holland, he applied to the magistrates for permission

He took a large house in Amsterdam, where he intended to reside; but he was soon seized with his old distemper the gout, and had a severe fit of it. However, the violence of it abated, and he seemed to be upon the recovery, when it suddenly flew up to his stomach, and put an end to his life. He expired in the arms of Mr. Wheelock, on the 21st of January 1682-3.* His cou-

A.D. 1682.

1682-3.

His death.

reçu en Hollande, où il se fit recevoir bourgeois d'Amsterdam, de peur que le roi ne le demandât à la république, qui par un traité est obligée de remettre les criminels d'état à la couronne d'Angleterre, pourvu qu'ils ne se soient pas fait passer bourgeois de quelque ville de Hollande; comme la couronne d'Angleterre est obligée d'en faire autant à l'égard des Etats. — *Bibliothèque Choisie*, tom. ii.

* C'est un honneur pour cette province, et pour la ville d'Amsterdam en particulier, d'avoir reçu et d'avoir protégé un si illustre réfugié, sans avoir égard aux sinistres impressions qu'on avoit voulu donner

de lui, à cause d'un discours qu'il avoit prononcé, comme chancelier, dans le parlement 1672. Les descendants de ce seigneur en conservent une mémoire pleine de reconnoissance, comme Monsieur le Comte de Shaftesbury, son petit-fils, me l'a témoigné plus d'une fois. Puisse cette ville être l'asyle assuré de l'innocence autant que le monde durera, et s'attirer, par une si généreuse conduite, les louanges et la bénédiction de tous ceux qui aiment la vertu, non seulement lors qu'elle est heureuse, mais encore lors qu'elle est persécutée! — *Le Clerc, Bibliothèque Choisie*, tom. vi. p. 367.

to do so, who answered his petition thus laconically, "Carthago non adhuc abolita, Comitem de Shaftesbury in gremio suo recipere vult."

A. D.
1682-3.

The respect
paid to his
memory.

rage never failed him to the last, but was displayed during his illness in an uncommon patience, resignation, and fortitude of mind.

As most of the lords of the States, and other persons of quality, had showed their regard for Lord Shaftesbury during his sickness by their frequent messages and visits, they testified likewise at his death their respect to his memory. They put themselves into mourning, and ordered that his corpse and his baggage should be exempted from all toll, fees, and customs in every place they should be carried through in order to their passage to England.

The ship which transported the body to England was hung with mourning, and adorned with streamers and escutcheons. When the corpse was landed at Poole in Dorsetshire, the principal gentlemen of the county, to manifest the regard which they had for the memory of Lord Shaftesbury, assembled together, though uninvited, and attended his body to his ancient seat at Winborne St. Giles's, where he was honourably interred.

His funeral.

The general
disposition
of his will.

He made his countess, Sir William Cooper, &c. executors of his will; in which he gave very libe-

rally to his grandson, Lord Ashley,¹³⁹ and entailed his whole estate upon him after the death of his son. He likewise left great legacies to his friends and servants, particularly to those who had attended him in Holland, besides several others to pious and charitable uses.¹⁴⁰

A. D.
1682-3.

[A monument bearing the following compendious history of his illustrious ancestor was afterwards erected by the fourth earl in the church of Winborne St. Giles

H. I. S. E.

ANTONIUS ASHLEY COOPER, præclaro Genere natus,
Avitæ stirpis splendorem titulis auxit, virtutibus illustravit;
Comes Shaftesburiensis, Baro Ashley de Winborne St. Giles,
Et Dominus Cooper de Pawlett; Ærarii Triumvir; Scaccⁱ ac totius
Angliæ

¹³⁹ It is scarcely necessary to remark that this Lord Ashley was the future author of the "Characteristics." Lord Shaftesbury himself superintended the education of this child. In March 1780, we find him writing to Locke, "I thank you for your care about my grandchild; but having wearied myself with consideration every way, I resolve to have him in my house. I long to speak with you about it."—*Lord King's Life of Locke*. The earl bestowed all his cares upon this grandson, through despair of making anything of his son, who appears to have been a fool. Dryden speaks of him with the utmost contempt.

¹⁴⁰ The original work concludes here: the concluding chapter has been added by the Editor.

Cancellarius; Regi a secretioribus Conciliis; Conciliique demùm
Præses

Carolo Secundo (suâ maximè operâ restaurato) constitutus.

Et principi et populo fidus, per varias rerum vicissitudines
Saluti publicæ invigilavit; Regnum Anarchiâ penitus obrutum
Restituit, stabilivit. Cùm vero despotici imperii fautores,
Servum pecus, et Roma, scelerum artifex, patriæ intentarent
ruinam,

Civilis et Ecclesiasticæ libertatis Assertor extitit
Indefessus, Conservator strenuus. Humanitate, in patriam amore,
Ingenii acumine, probitate, facundiâ, fortitudine, fide,
Cæterisque eximiis animi dotibus, nullum habuit superiorem.
Vitæ, publicis commodis impensæ, memoriam et laudes,
Stante libertate, nunquam abolebit Tempus edax, nec edacior
Invidia.

Servo priori inutilia, invisa magna exempla.
Tribus abunde felix nuptiis; primis duxit Margaritam Domini
Coventriæ
Filiam; secundis Dominam Francesam filiam Davidis Exoniæ
Comitis,
Ex quâ filius unicus Hæres; tertiis Margaritam filiam Domini
Spencer.

Obiit 22^o die Januarii, A. D. 1683. Ætatis suæ 62;

Hoc marmor sepulchrale, testamenti patris piè memor,

Antonius Comes Shaftesburiensis illustrissimo proavo

Extrui curavit A. D. 1732.]

CHAPTER XI.

Character of Shaftesbury.

[In order to form a just estimate of the character of Shaftesbury, we must at once put aside all the opinions of his contemporaries. We must judge him only by the facts of his life which they have transmitted to us. The former invariably take their colour from the bias of the writer's mind; his friends indulging in exaggerated eulogy, and his enemies pursuing him with equally indiscriminating abuse. The latter form a surer standard: facts may be in some degree distorted, but they cannot be entirely deprived of their identity; and from the variety of the channels through which they descend to us, we are enabled to abstract the colouring from each, and to view them in their original character.

Judging Shaftesbury by the standard I have proposed, he appears to have been possessed of

those two indispensable qualifications, without which no superiority of talent can form a statesman, — patriotism and ambition. Shaftesbury's genius, nursed amid the turmoils of a civil war, seemed to take its character from the scenes by which he was surrounded. He first appears a sanguine and somewhat visionary youth, whose advocacy contributed only to sow dissension among the party whose cause he had espoused. But the ill success of his first endeavours, and the danger he had escaped, wrought in him an immediate change. It requires caution and courage of no ordinary character to preserve a man who contends for eminence throughout a period of successive revolutions; yet, Shaftesbury, who entered this scene of intrigue and violence a mere boy, passed through it with unvaried success. Whatever was the form of government, his talents always procured for him an eminent position in it: whether the tyranny of the day was wielded by a committee or a council, by lords commissioners or a lord protector, it was always found necessary to court the young baronet; and it affords a remarkable proof either of his penetration or his power, that the parties whom he abandoned seldom remained long in possession of the govern-

ment, and that those whom he joined seldom failed to displace and succeed them.

This continual success could not be obtained without some sacrifice of principle. Shaftesbury can never be looked upon as a consistent or an upright man ; he was at this time evidently guided chiefly by ambition, and impelled by that restlessness of spirit which always possessed him, and never allowed him either privacy or repose. He was, doubtless, not altogether uninfluenced by a desire of preserving his country through these troubled times, but his conduct forbids us to rank this higher than a secondary motive. It is doubtful whether any form of government, however apparently excellent, would have received his support, or escaped his hostility, if he had been excluded from an active share of it. Viewing the conduct of Cooper during the supremacy of Cromwell, and the involved and intricate intrigues which preceded and followed, we cannot but admire it as a master-piece of policy ; but our admiration is excited by the energy, the talent, and the skill, not by the patriotism of the statesman.

The account given in the preceding pages of the conduct of Sir Anthony at the commence-

ment of the Revolution entirely absolves him from those accusations of treachery which all Tory writers advance when they speak of this part of his life. Shaftesbury was the foremost among those who astonished the nation by a formal declaration of that right of resistance, which had already been acted upon in extraordinary cases, but had never before been asserted as a principle of the constitution. He was afterwards the leader of the Whig party, and the chief of that opposition, without whose efforts it is more than probable that Charles would have triumphed over the liberties of his subjects, and that his brother would have consolidated his conquests. It would indeed be an inconsistency which scarcely any superiority of talent or any after services could induce us to forget, had such a man, even in his youth, espoused the party of the first Charles. That party was formed to support the most violent measures by the most violent means; to defend with the sword usurpations which had been gained by fraud and force; to extinguish for ever all popular rights, and to establish in their place prerogative. Those who joined this party must have been influenced by mere instinctive loyalty, (a motive which was

then considered so noble, and which is in reality so contemptible,) or they must have sought private advantage at the sacrifice of all public virtue. Shaftesbury's is a faulty character, but it would not have led him to herd with these. In him ambition was a powerful passion, but it was not so reckless as to lead him, like Eratosthratus, to covet an immortality of infamy. Every action of his after-life, and every passage of his speeches and writings, show that he could never have cordially joined the party of the king, and that his natural and proper place was among the forces of the parliament. His conduct upon this occasion betrays the inexperience as well as the confidence of extreme youth, but it affords no ground for a charge of treachery.

The capacity of the future earl, so apparent during the eventful period of the Commonwealth, was conspicuous at the Restoration. The particular account given in this work of his management of Monk, and of the extraordinary penetration which enabled him to comprehend and govern that extraordinary man, depends certainly upon his own authority; but it is corroborated by all the circumstances of the time. His intimacy with Monk is shown by the fact that he was

among the first whom that general recommended to the king after his restoration: that he was zealous in forwarding that event is proved by the readiness with which Monk's recommendation was in this instance agreed to, the favour with which Sir Anthony was received, and particularly by the patent of his peerage, in which his services in bringing about the Restoration are expressly recognised, and stated as the chief reason of the grant.

Up to this period, his conduct, although not that of a statesman of undeviating rectitude, presents no glaring inconsistencies. He was uniform in his opposition to tyranny, whoever might be the tyrant; and even during the irresistible reaction which accompanied the Restoration, he was one of those who would have exacted securities, and who were desirous of restoring the Stuarts upon terms. Hitherto, the most prominent part of his character is that wonderful foresight, and that singular penetration, which enabled him, by withdrawing from all the violent measures of those with whom he acted, to escape the odium that attached to them, and to calculate the ebb and flow of popular feeling so correctly, that he was always borne by it into power when its

current was not too rapid to be trusted with safety.

He was now a courtier and a minister, and no Whig could hold either of these offices during the reign of Charles without a sacrifice of character. One of his first acts betrayed a degree of indelicacy that shows Shaftesbury's ideas of consistency and propriety to have been by no means of the highest order. He was certainly guiltless of the king's death, nor did he ever sanction the violent measures of the party by which that event was brought about: but he had himself fought against the king; he had been conspicuous throughout the existence of the commonwealth, and he had enjoyed a full share of the power which these men had procured. It was natural that the Royalists who had lived so long in proscription and indigence should return thirsting for revenge, and that they should seize any pretence for wreaking it upon the leaders of the late rebellion: such a task would have been a worthy and a grateful office for the Tory followers of Charles. But that Shaftesbury and Holles, who had advanced within one step of this act, and whose opinions differed but a shade from those of the parties who committed it; that these men should sit in judg-

ment upon and condemn the king's judges, is a lamentable proof of the eagerness with which even the chiefs of the late government courted the favour of the restored king, and how well prepared they were to forfeit their character, and abandon their opinions, to attain that object.

I have before observed that Shaftesbury was active in apprehending and examining these men, whose conduct, although unnecessarily violent, and therefore highly culpable, was not deserving death; and that Holles rendered himself conspicuous at their trials. Such conduct can admit of no excuse; it was a meanness unworthy men of character and talent, and could only have been prompted by the most pitiful motives.

This was but a prelude to other and more important acts, which are even yet less capable of defence. Shaftesbury's conduct while a minister of the crown merits general condemnation. He now abandoned every principle which he had formerly held, repudiated those opinions by which he had formerly been guided, and boldly stood forward the hired advocate of new usurpations, the champion of prerogative.

In the preceding work much has been said in extenuation of Shaftesbury's conduct while he

held office under the crown, and he is now proved to have been opposed to many of those iniquitous measures which have been often ascribed to him. But it is unnecessary to criticise every act of the government of which he was a member. We may acquit him of all participation in the ruinous project of shutting up the exchequer; we may absolve him from all knowledge of the secret treaty; we may believe him to be guiltless of a bribe; and yet sufficient remains to characterise him as a corrupt and pernicious minister.

Men become corrupt from other motives than that of avarice: vulgar minds are seduced by money; the most illustrious yearn after power. This was the bait that led Shaftesbury astray from the path of political consistency, and made him a member of the Cabal. According to our ideas of ministerial responsibility, he is guilty of every act which has rendered that name so infamous, except the secret treaty, of which he had no knowledge. But this principle of our constitution was at that time more vaguely understood, and Shaftesbury only considered himself responsible for those measures which he himself recommended in council or supported in parliament.

It is in vain to attempt to draw any distinction which may form a ground for a full defence of Shaftesbury's ministerial conduct. His name cannot be erased from the list of the commissioners of the *traité simulé*; and there is scarcely a shade of difference between the guilt of those who advised this treaty, and of the king who effected the other. To seriously undertake a violent change in the religion of a free and powerful nation, and to hope to support his despotism by the aid of foreign mercenaries, was a project worthy of the heart and head of a Stuart; but even Charles, afterwards, when he saw the turbulent disposition of the people, and reflected upon the fate of his father, discovered how hopeless was the adventure, and abandoned it in despair. It required, therefore, no great virtue in Shaftesbury to resist all overtures to engage in so absurd a task;—his enemies never accuse him of more than a want of principle;—to have joined in this he must have been destitute of understanding. He went, however, as far as he could with safety. He accepted for his master a bribe with which he scorned to pollute himself; and in return he sold his country to France, with a full knowledge of the iniquity of the measure he was advancing; for

this his after conduct proved. He rendered England for the time a mere dependency of the French crown; he plunged her into a war with a power which it was at that time peculiarly her interest to protect, and employed her arms in the service of a dangerous rival. He concocted with a foreign power measures which he knew would rouse his countrymen to rebellion, and sought and received a promise of troops to suppress the insurrection which he was determined to provoke. All this he did to obtain for his master the means of dispensing with parliaments, to prevent any serious opposition to the usurpations of the crown, and to preserve that arbitrary power which Charles possessed, but he himself wielded.

For this Shaftesbury is personally responsible, and for this every impartial student of the history of his country must condemn him. But there are some favourable points in his ministerial character, and these are sufficient to create a wide distinction between him and his associates in the government: some of these are not untinctured with that favourable feeling towards a strained prerogative, which is so natural to those who expect to influence its exercise; others are less adulterated. Among the former may be

reckoned his declaration of indulgence; perhaps his constant opposition to the Duke of York and his popish confederates deserves to be ranked among the latter.

Shaftesbury's sentiments upon the subject of religious toleration are alone sufficient to place him immeasurably above the mere candidates for royal favour who crowded the avenues of Charles's court. These sentiments, not all the violence of party struggles, not all the peril occasioned by the secret attempts of the catholics, could overcome. There is a sentiment recorded by Mr. Locke upon this subject: "Lord Shaftesbury desired me," he says, "to weigh seriously whether liberty and property were likely to be maintained long in a country like ours, and in this age of the world, if articles of faith and matters of religion should become the only accessible ways to our civil rights."* This sentence, and that which preceded it, disavowing any approval of unnecessary severities against the papists, were very far in advance of the age. It is a truth which Shaftesbury and the philosopher held in common with very few others: its universal acceptation was reserved for a future day.

* Letter to a Person of Quality.

That the means by which Shaftesbury attempted to effect a measure of toleration were utterly indefensible, I have already declared: but he, who was not a very strict casuist, might think that the end he proposed justified the means he adopted; and the object was certainly important. Shaftesbury readily penetrated the designs of the Duke of York and his coadjutors; and there is no reason to be drawn from any part of his conduct, to prevent our conceding to him that, while he saw the absurdity, he detested the wickedness of those designs. To oppose them with effect it was necessary to unite the protestants. According to the detestable policy of Charles, the severe laws which had been enacted against all nonconformists were executed with cruel precision against the protestant dissenters. He hoped that they would be thus driven to resistance; and that with the army which this excuse would enable him to raise, he should be in a situation to render himself an absolute catholic sovereign of a catholic kingdom. The patience of the dissenters upon this occasion forms a noble contrast to the persecuting spirit which distinguished the high-church monarchy-men of Charles's first parliaments. The protest-

ant nonconformists submitted patiently to every severity rather than raise complaints that would give the court an excuse for further measures for the establishment of popery ; but, although they restrained their indignation, they could not but feel resentment at the persecution they endured ; and the first object of any able man who meditated an opposition to the popish successor, must be to unite all protestants in a common defence. We may believe that this was Shaftesbury's design, but he underrated the vigilance of the dissenters. They unanimously opposed the declaration ; and declared that, although they wanted an indulgence, they would never receive it at the expense of all law.

Foiled in this attempt to create a covert opposition to the party now absolute in the cabinet, Shaftesbury soon discovered the necessity of taking some decided step. He had already made every sacrifice to retain his station, short of engaging in a deliberate crusade against the liberties of his country : he saw that he would soon have to choose between this last step and dismissal. That he might yet have preserved himself in power is rendered certain by the proof now produced : magnificent offers were made to

allure him. The service of the court offered rank, power, and influence : it was not without excitement, for it was attended with much danger ; nor was it destitute of profit, for so valuable an ally might expect to participate largely in the liberality of France. On the other side was certain loss of power, and a very uncertain prospect of popularity. Shaftesbury had done little of late to deserve the favour of his countrymen ; and he might reasonably anticipate, that, when he came to them a discarded courtier, they would receive him with suspicion or contempt. If there was danger to be met in the cause of the court, there was at least an equal danger in that of the people. Shaftesbury well knew the extent of the power which the crown now possessed ; and he also knew that this power was about to be strained to its utmost stretch, to obtain a decisive object, and to crush all opposition. He was too well versed in the politics of the day, not to be well aware of all the evils which must follow him in his secession,—they were certain : the advantages were, in the most favourable point of view, but problematical. It has been said, and has been too abundantly proved, that Shaftesbury was ambitious ; his present con-

duct shows that he was not destitute of patriotism. He had wavered long between these two motives, and he had sacrificed much of the latter to the former; but when it became necessary to choose distinctly between the two, he shook off at once his robes of office and went over to the Whigs.

Shaftesbury immediately became the object of the Duke of York's direst animosity, and that person now directed the government of the nation. The period which immediately succeeded, notwithstanding the labour successive historians have bestowed upon it, still continues to be the most mysterious part of our history. Much of the obscurity that once veiled it has indeed been removed by the researches of Macpherson and Dalrymple; but the secret history of those artifices by which the whole nation was excited to, and sustained in, a credulity which appears to us infatuated, is yet untold. The incessant rumours of plots, which kept the public mind so restless, and the eagerness with which, although destitute of probability, they were believed, are easily traced to the suspicions which were so justly entertained of the king. Men who move with a consciousness of the pre-

sence of a secret enemy, believe they behold him in every shadow; and those who valued their religion and their liberty thought they saw in every pretended plot that real one which they with so much reason dreaded. Unfortunately, Shaftesbury was so immediately connected with the intrigues of this period, that, to form a perfect and minute judgment of him, we must be thoroughly acquainted with them; and this, whatever the future publication of private papers may hereafter discover, is not yet granted to us.

We know, however, quite sufficient to convince us that the passionate persecution of the court, and his own superior powers, immediately placed him at the head of the Whig party. His knowledge of the secret counsels of the Cabal, resentment for the ingratitude with which he thought his services had been requited, and zeal for the cause which he had now thoroughly espoused, rendered him more violent in his opposition even than those to whom he had so lately been opposed. It was indeed a time when energy was required to contend; and judgment was necessary to mature the means of defence and select the points of attack.

In the struggle which followed, Shaftesbury

played an important, but a very equivocal part. He now knew of the whole scope of that secret treaty concerning which he had been so miserably duped. He knew that a plot existed, headed by the royal brothers, supported by all the power of the crown, and sustained with gold and promises of armed assistance from France. He knew that there were multitudes of emissaries from the court of Rome in the kingdom, who were arranging all the minutiae of the projected effort, and extending it in countless ramifications throughout the empire. He had discovered sufficient to render him certain of an approaching danger, and certain that it was of no ordinary magnitude; but he knew not where it existed, or in what form it would appear.

With such apprehensions, it is natural to suppose that Shaftesbury and his coadjutors were quite ready to credit as undoubted facts, statements which we, who are uninfluenced by the same fears, immediately reject as falsehoods. The first depositions of the informers who opened the dreadful tragedy of the Popish plot were neither so absurd nor contradictory as they were afterwards rendered by the numerous additions which were found necessary. The murder of Sir Ed-

mondbury Godfrey immediately after he had taken these depositions, gave a terrible probability to the story; and the letters of Coleman, the Duke of York's secretary, anticipating the immediate establishment of his own religion throughout the country, and naming his master as the instrument destined by Heaven for this great work, so strongly corroborated all that had yet been said, that no proof however clear, no absurdity however palpable, could remove the deep impression.

If this pretended plot was contrived by Shaftesbury: if, as Sir John Dalrymple says, "Shaftesbury coined rumours as they fitted his purpose, and had men of his party ready who could repeat, and men who could write them, so as to make them circulate through every part of the kingdom:" if it be true, as he affirms, that, "void of all feeling, he confirmed his inventions by public trials, and without remorse saw prisoners led to death for charges which himself had contrived,—engaging thus even the passions of horror and amazement in the public to make things credible which without these could not have been believed:"*—if this be true, and he did as Mr. Hallam says, † "halloo on these per-

* Dalrymple, p. 45. † Constitutional History, vol. ii. p. 605.

jured witnesses through all the infamy of the popish plot," then it is in vain to inquire further into the character of Shaftesbury. We must look upon him only as a calculating and cold-hearted murderer, from whom we turn with feelings of disgust and loathing. No patriotism, no eloquence, no talents, could ennoble such a man, or entitle him to the remembrance of posterity except as an object of execration.

But I do not believe Shaftesbury to have been thus guilty. Notwithstanding the sneers of Mr. Hume and those who have followed him, it is certain that, at the first opening of the popish plot, circumstances so favoured its probability that any rational man might have yielded it his credence. Shaftesbury, I think, did so honestly : he was active in the examination of Atkins and others, who were thought to be privy to the plot ; and his conduct is certainly that of a man who thought he had before him an obstinate conspirator. But circumstances, which might incline a reasonable man to believe, wrought in the generality of the people an immoveable conviction ; the flame quickly became ungovernable, and far beyond Shaftesbury's power to quell. A popular leader may direct the pas-

sions of his followers, but he cannot restrain them when aroused. Shaftesbury's activity, when the plot first broke out, was doubtless efficient in kindling this flame; but he had no power to quench it.

It is indeed exceedingly unfair that Shaftesbury should be held solely accountable for this epidemical madness, which produced a simultaneous effect upon the whole nation. Why should one man be made responsible for a credulity which was shared by an entire people? * Why should it be considered impossible that he could credit a plot which was declared to exist by parliamentary votes passed without a dissenting voice, which was brought to light by the first minister of the crown, which every man in the empire believed except those who

* Even the Tory printer Thompson, when he put forth that mass of ferocious ribaldry, called "Loyal Poems, published by Nathaniel Thompson," speaking of Oates in his preface, says, "That masterpiece of hocus-pocus, where the dexterous operator Titus so much outwent every little brother of the sleight-of-hand, the puny jugglers of the age, that whereas their feeble art can only swallow knives or daggers, this greater Hictius Doctius could gorge or disgorge fire-balls and black-bills, nay, squadrons and armies, either above or below-ground; and though with no less than three kingdoms for their spectators, scarce one English eye-sight quick enough, or one head-piece deep enough, to detect the legerdemain."

were implicated by it, and which he had particular grounds for deeming probable? Shaftesbury was indeed now the head of the Whig party, and to the Whigs this plot has been generally attributed, but unjustly.* There is strong reason to suppose that it was originally a court expedient to increase their standing army. There is no doubt that Lord Danby might have silenced the informers at once; but he chose rather to introduce them to the public. The king laid the affair before his parliament, expressly mentioned it in his speech, and all the measures of the court showed a design to favour its prosecution. It quickly grew too strong for their control; but it was taken out of their hands, not by the Whigs, but by the country. The court then veered round, and was followed by its own little party. The catholics, the immediate dependents of the court, and a few men of superior intellect of both parties, remained incredulous; but all the rest of the nation, whether Whig or Tory, joined loudly in the cry. This

* The propriety of charging the Whigs, as a body, with the invention of this plot, will more naturally require extended notice in a work upon which I have long been at intervals employed, and which will probably be called a "History of the Whig and Tory Parties, from their rise in the reign of Charles II. to the passing of the Reform Bill."

was particularly evident upon the trial of Lord Stafford. In the house of lords the Tories possessed a decided majority, yet was that nobleman convicted; the lord chancellor and several of his associates in the ministry voting against him, while Lord Holles, and more than one other of the Whigs, voted for his acquittal.

It is folly to attribute to the agency of a single man so mighty an impulse as this: in order to be thus acted upon, a nation must be prepared by a long series of suspicions; and, when thus prepared, nothing is too absurd to become an object of popular belief. Individuals who are most acute in ordinary matters will, under such influence, be often found the most forward to advocate conclusions that are warranted only by their prepossessions. We have in our own days heard a cry of "popery" no less unaccountable upon any rational principle than this. It was scarcely less powerful, since it for some time overbore the good sense of the nation; and it was even more absurd, since it was raised at a time when, as Lord John Russell well remarks, any danger from the papacy was just as probable as a second invasion of the Romans. *

It is, however, necessary to notice some evi-

* Life of Lord William Russell.

dence which has been brought forward in order to stigmatize Shaftesbury as the author of this plot. Roger North relates an anecdote, that a certain lord in the earl's confidence once asked him, "What he intended to do with the plot, which was so full of nonsense as would scarce go down with *tantum non* ideots? What then could he propose by pressing the belief of it upon men of common sense, and especially in parliament?" "It is no matter," Shaftesbury is said to have replied; "the more nonsensical the better: if we cannot bring them to swallow worse nonsense than that, we shall never do any good with them." *

Roger North is a mere party writer; his malignity and effrontery form a sufficient antidote to the poison which his work contains. Any man who wished to give an impartial account of any act which at all interfered with the party politics of this author, would immediately reject his authority as utterly worthless. I cannot admit him as a witness against a man whom he so cordially disliked.

Sir John Dalrymple says, "It has been doubted whether Shaftesbury contrived the popish plot, or if he only made use of it after it broke out:

* Examen, p. 95.

some papers I have seen convince me he contrived it, though the persons he made use of as informers ran beyond their instructions." *

I place as little reliance upon this evidence as I do upon that of Roger North, whom Sir John proceeds to quote with entire belief. We know that Dalrymple was far too much addicted to sacrifice historical truth to rhetorical effect, and the value of his Memoirs has fallen in proportion. He had a strong bias towards Tory principles; he drew his history chiefly from those who advocated those principles; and he would doubtless, upon such a subject, be convinced by evidence which to another would appear very questionable.

There is yet stronger reason to doubt Sir John's authority upon this point. After the publication of his Memoirs, he put forth a volume of Appendix, containing all the original materials from which his work had been compiled, and many very valuable papers, to which he had since obtained access. Of all the mysterious points in the reign of Charles the Second, that of the popish plot is the most impenetrable; yet in this Appendix there is no mention whatever, not even a hint, concerning those important papers which had rendered this subject so clear to this historian.

* Memoirs, p. 43.

When we remember the laudable enthusiasm of Sir John Dalrymple in the collection and publication of historical materials, and the great importance of the point thus vaguely disposed of; and when we couple his known political bias with the absence, not only of the papers themselves, but also of all definite allusion to them; we have sufficient reason to reject this testimony with as little scruple as we did that of Roger North.

The impossibility of a man of sense believing this plot, is distinctly disproved by the dying declaration of Lord William Russell. "As for the share I had," he wrote, "in the prosecution of the popish plot, I take God to witness that I proceeded in it in the sincerity of my heart, being thus then really convinced, as I am still, that there was a conspiracy against the king, the nation, and the protestant religion; and I likewise profess that I never knew anything, either directly or indirectly, of any practice with the witnesses, which I looked upon as so horrid a thing that I could never have endured it." *

Who shall impeach this testimony? It is the dying declaration of a nobleman who possessed a sterling sense more valuable than genius—of a

* Paper delivered to the sheriffs by Lord William Russell at his execution.—*State Trials*.

man upon whose memory not a stain of dishonour rests.

Upon a careful examination of the imperfect materials we have for forming a judgment, I think the balance, in this instance, inclines in Shaftesbury's favour. An impartial person will look upon him as a violent partisan hurried away by passion and blinded by apprehension of a real danger, but he will acquit him of being the deliberate contriver of a scheme of wholesale murder.

This is by far the most important accusation which has been brought against Shaftesbury; yet it is a singular instance of the universality of the popular feeling, that few of his numerous adversaries press this against him. Otway, in his "Venice Preserved," ridicules him, under the character of Antonio, raving of plots; and Dryden, as Achitophel, in his celebrated poem: but even he allows the existence of the plot,—“Some truth there was,” he says; although he accuses him of exaggeration.

I have found among the Lansdowne MSS. a short character of Shaftesbury, which is worthy of insertion as a favourable specimen of the manner in which his enemies thought and wrote of him while thus employed in strenuous opposition.

“THE CHARACTER OF A DISBANDED COURTIER.

“*Dedicated to the Author of that famous Speech called ‘The Speech of a Noble Peer.’*

“He was born of a considerable family; heir to a fortune above contemptible; but with an aspiring mind, by much too high-flown for his quality and his estate.

“His behaviour towards his king was so loyal in times of difficulty and danger, that everybody who knew him knew he deserved advancement,—advancement at least as high as that of Haman.

“His dexterity in doing ill, made him thought capable of performing admirably well, if ever he came to be publicly employed and intrusted.

“So he was preferred for his ability to the highest places of honour and office, admitted into the cabinet councils, made acquainted with all the secret wheels, and could tell how many coggs there was in each wheel upon which the great engine of state was turned and kept in motion.

“By the favour of his prince he acquired sufficient riches to support the splendour of a family new raised to the degree of nobility.

“His glory was once so eminently conspicuous

that there were but a few persons below the crown seemed above him ; and nothing was wanting to render his felicity as lasting as Nature intended his life, but a heart that knew how to be grateful to a most munificent benefactor.

“ He thought all the favours and honours he enjoyed were less than the reward of his merit : that thought puffed him up with pride, such a sort of pride as is usually attended with an irrecoverable fall ; which was his fortune. And at his fall (like that of Lucifer, his predecessor,) might very well have been proclaimed, Woe to you the inhabitants of the earth, for the Devil is come down among you !”

“ Open revenge against his sovereign being too dangerous to attempt, he presently resolves upon secret ; he exposes all the weaknesses and infirmities of the court, (from which no court, or city, or country can or will ever be free ;) and where he can find no real faults, he feigns imaginary ones, and passes them off for currant.

“ By his new and false optic, he represents every molehill of mistake in the public administration for a mountain as tall as Teneriffe, and as dangerous as the top of Etna : nay, he multiplies and magnifies the very miscarriages which were the effect of his own evil counsel.

“ He amuses the free’st nation in the universe with wild rumours and extravagant apprehensions of slavery, under the government of a prince who, in acts of favour, and mercy, and clemency, has exceeded all his predecessors.

“ He fills the heads of the people full with whimsical fears of fantastic devills, chimeras, which only his malice had raised on purpose to frighten them out of their loyalty and their witts, and prepare and ripen them for Bedlam or for rebellion.

“ He makes the pretences of liberty the stirrup to get up, and religion the steed he rides in pursuit of his monstrous designs.

“ With these pretences he cheats the innocent (after tickling their fancies with the feathers of ambition); and promising to open their eyes, serves them as the apostate angel did our parents in paradise,—only shows unto them the dust of disobedience; and then robs them of those jewells he undertook to bestow, (viz.) liberty and religion, which are both so much talked of and both so little understood.

“ Being a gentleman of no religion himself, he seems for all that to espouse every division and subdivision of it, every faction and person

who are bold enough to stand stiff in opposition to the ancient and well-settled form of government.

“If he be by inclination covetous, and temperate by nature and habit, he rather chooses to invert nature itself than suffer a disappointment in his designs of revenge, to which he makes a sacrifice at once both of his virtues and his vices.

“He keeps open house for entertainment of all state malcontents, without consideration of quality or qualification.

“He accompanies and carrouses, and contracts intimacy and amity with, the lewdest debauchees in all the nation that he thinks will any ways help to forward his private intrigues.

“He becomes all things to all men in the very worst of senses—perverting the design of St. Paul’s—that he may at least prevail some to be as bad as himself.

“Nor are soft and easy men by him only deluded; he is too cunning for the very lawyers themselves (though they are too cunning for all the rest of mankind). A most eminent attorney, and a famous solicitor, and a reverend judge, are not free from the force of his inchantment.

“By the subtlety of his insinuations he bewitches to associate with him great part of the new, and of the sons of the old nobility,—the sons of such fathers as dyed in the faithful defence of their suffering sovereign.

“He deceives (besides a number of other great men and great counsellors) a generall of an army, a viceroy of a kingdome, a darling of the people, and a son to the greatest and the best of fathers upon earth.

“He would fain be reputed as constant as the sun, and yet his age has produced nothing beneath the moon more fickle and variable; for he never was, and his like never will be, true to anything, save only the eternal resolution of doing mischief.

“Having lost his honour with his prince, and the good opinion of the best subjects and the best men, he cringes, and creapes, and sneakes to the meanest and basest of the people, to procure himself among them an empty and vainglorious (because understood) name,—The Patriot of his Country.

“And hoping to be shortly made the little head of the great rabble, he would persuade them to believe that they are all betray'd; and that the

king himself is in the plot against himself, as well as in the plot against them.

“ He encourageth them to strike home against those whom he calls the enemies of the king and kingdome, (pointing at the faithfullest and most affectionate servants to both,) well knowing that the mighty fabric can never be shaken till its main pillars and supporters be by cunning and sly stratagem either destroyed or undermined.

“ At last, through the Divine Providence, the magicall mist he had cast before men’s eyes dissipates and totally vanishes. The hypocrite’s veil falls off of its owne accord, leaving his deformity naked and openly exposed.

“ His dearly beloved mistress, Popular Applause, forsakes him; and, to compleat his undoing, he lives to see the death and burial of his fame,—even the very fame of his politics.

“ So that nothing remains to give him consolation, after such sensible and biting disgraces, but only the liberty he has left him to follow the great example of King David’s defeated politician.

“ Postscript to the Printer.

“ If you be anxious to know who is meant in this character, you may easily imagine ’tis Simon

de Montford, Earle of Leicester; in whose time the wood* parliament sat at Westminster.

“He was one while a prime favorite of the king, one while the meer idol of the people; sometimes a rebell, and always a rogue.

“However, if any man now alive claim a property in any part of the character, you may tell him the author is a peaceable person, and, rather than stand a suit at law, let every one take what part he calls his owne, and much good may it do him.

“Farewell!”

Whether Shaftesbury deserved the reproaches thus lavished upon him, the reader is now in a position to judge. The latter part of his public life, the bill of exclusion, the projected rebellion, his design in favour of the Duke of Monmouth, need no defence. The king, by his violent attack upon the charters, and other equally tyrannical conduct, had struck down the constitution, and the life and fortune of every man in the kingdom lay at his disposal. He had become an absolute tyrant, and every Englishman was bound to resist him. The only question is, whether the

* *i. e.* mad.

plan proposed offered a fair prospect of success. If it did not, the attempt was undoubtedly culpable. Monmouth's popularity was certainly great, and Shaftesbury was well versed in the conduct of revolutions; his influence in the city was all-powerful; and there is reason to believe that, had his advice been taken, and the plan he contrived promptly executed, Charles would have died in exile, or reigned as a limited monarch, and Russell and Sydney might have lived to serve and adorn their country.

It must never be forgotten that by Shaftesbury's exertions we obtained the habeas corpus act, and that he introduced a bill to render the judges independent of the crown. The latter failed, but its importance was never lost sight of; and these two laws now form the two best pledges of the durability of our constitution.

For strict political honour he has no rival in that age except Lord William Russell. All their contemporaries, not even excepting Algernon Sydney,* did not scruple to accept from

* "I have in my life," says Sydney, in an excellent letter, "been guilty of many follies, but I hope of no meannesses. *** Detestable bribes, worse than the oaths now in fashion in this mercenary court."—*Somers' Tracts*, viii. p. 7. Yet Sydney

France a bribe for the performance of services which they would have considered it their duty to perform otherwise. But these two men stand alone; and if Shaftesbury is inferior to Russell in genuine patriotism, as he undoubtedly is, he equals him in his high contempt for those groveling considerations which influenced so many others.

Upon a retrospect of the acts of Shaftesbury's public life, it is perhaps fair to adopt the Persian method of computation of merit, and oppose the good to the evil. The balance is greatly in the earl's favour. However justly he may be condemned for particular acts, and however strongly we may reprobate isolated parts of his conduct, no one who values constitutional liberty can look upon the important labours which he wrought, and remember that his was the head that contrived and the hand that executed, without viewing him as a benefactor to his country. It would

received two sums of five hundred guineas from the French agent who was instructed to sustain the fervour of the opposition members. Lord John Russell throws some discredit upon the paper which has brought the secret corruption of this time to light, and attempts to defend Sydney and Hampden; but, although very willing to be convinced, I cannot resist the evidence which the papers in Dalrymple afford.

be vain to search throughout mankind for an individual whose every act was prompted by a pure and disinterested patriotism: it is yet more vain to search for such a man among distinguished statesmen; those who draw such may sketch from nature, but they fill up the outline from imagination. Happy is it, both for the memory of the statesman, and for the country which he influenced, when it can be said of him with justice, as it may of Shaftesbury, that he died his country's benefactor.

The private character of Shaftesbury will require no extended notice. Mr. Fox, who was by no means partial to the earl, admires him as strictly a man of honour; and every act of his life justifies the opinion. His conduct to Mr. Holles and Lord Arlington will not be forgotten; and his performance of the important duties of chancellor drew unwilling admiration from his enemies. Unfavourably circumstanced as Shaftesbury was for discharging the functions of a judge, it is no small testimony in his favour that Roger North, who hesitated at no exaggeration, who was himself a lawyer, and seemed actuated even by private hatred against the earl, can ad-

vance nothing against his chancellorship but the whimsical gossip which I have already quoted.

As a private gentleman, Shaftesbury might challenge the severest scrutiny. Of his conduct in the other and more domestic relations of life we know but little. We are told, in the foregoing work, of letters still existing, which passed between him and his lady, and "are proofs of the tenderness which he had for her." *

The opinion of Charles, and the anecdote I have cited from North, seem to discredit this praise; but Shaftesbury was a courtier in the most licentious court that England ever saw. It was not his object or his talent to awe by the severity of his virtue; he aimed rather to attract by his lively manners, and to please by his sparkling wit. Clarendon, who had preceded him, exemplified the folly of a man attempting to preserve a character for private morality while holding office under such a king. We can imagine, and smile at the awkwardness which the grave and correct Clarendon must have felt, while kneeling before the newly-married queen, and entreating her to receive her husband's favourite

* Vol. i. p. 33.

mistress as one of the ladies of her bed-chamber :* but Shaftesbury had the tact to avoid the reputation which would render him useful in such disgraceful offices. Charles saw in him no tacit censor of his conduct ; for the earl vied with himself in immorality, and was consequently admitted to his society in his convivial and unguarded hours. If the letters mentioned warrant the character which has been drawn from them, there is nothing in the opinion of either Charles or North to disprove it ; for the ambition of Shaftesbury would have prompted him to acquire a reputation for debauchery, even though he had shunned its practice.

Neither old age, infirmity, nor persecution, could impair Shaftesbury's cheerfulness and his enjoyment of a jest. I find the following anecdote in a letter written by Mr. Benjamin Martyn to Dr. Birch in the year 1741, while employed in writing this work. Mr. Martyn writes :† “ I saw, two days ago, an old gentleman who was an acquaintance of the first Lord Shaftesbury.

* See Mrs. Jameson's “ Beauties of the Court of Charles the Second.”

† This letter is among the Birch MSS. and is dated September 20th, 1741.—*Aysc. Cat.* 4313.

He is between eighty and ninety, has a good understanding, and a surprising memory as far as relates to stories of his youth. He says, Lord Shaftesbury had to the last a prodigious vivacity and cheerfulness, that appeared in all he said or did. One trifling instance he related which he was an eye-witness of. When Lord Shaftesbury lived at Thanet House, in Aldersgate Street, a country clergyman inquired for 'my lord;' and being introduced, he fell upon his knees before Lord Shaftesbury, who was in a grey silk night-gown, and said: 'My lord, I humbly ask your blessing.' The earl held his hand over him and said, 'I give you my blessing as Earl of Shaftesbury, which perhaps may do you as much good as my Lord of London's; but he lives over the way.' The clergyman, frightened at what he had done, (for Shaftesbury was at that time looked upon as a sort of evil spirit by him and his party,) got up and ran away very abruptly without taking any leave."

As a patron of literature, Shaftesbury is justly entitled to our high estimation. We have seen the strict intimacy which existed between him and Mr. Locke. The earl was often a sharer in the literary labours of the philosopher; and there

yet exists among his papers a letter upon Toleration, which appears to be an early sketch from which Locke's Essay upon the same subject was afterwards filled up. The abuse which was lavished upon him by the court writers, he seems to have treated with the most philosophical and provoking disregard. Dryden, himself a renegade both in politics and religion, could never draw from him a reply. The foolish liberality towards this poet, which has been attributed to him, is indeed disproved; but we never find that Shaftesbury betrayed resentment for the cutting satires with which the laureat lashed him. Shaftesbury's indifference was a fortunate circumstance for Dryden, since the conventional law of libel was at that time so summary that he had received a very severe cudgelling through the agency of the Earl of Rochester, only because his lordship chose (erroneously) to suspect him to be the author of a lampoon that appeared against him. Had the ex-chancellor been equally susceptible or vindictive, Dryden could seldom have returned home at night from his coffee-house in safety.

Literature owes much to Shaftesbury for the studious care which he took of the education of

his grandson. We are told that, while he was yet an infant, he was taken by his grandfather, and placed under the care of a lady of such rare acquirements, that from his cradle the future author of the *Characteristics* imbibed an acquaintance with the ancient languages, and spoke them indifferently with his mother-tongue before he was old enough to distinguish them. It is, doubtless, owing to the example and exertions of this great man, that the pursuit of literature and the promotion of it in others, seemed to be for several generations hereditary in his descendants.

He appears himself to have possessed considerable ability for light and sketchy composition; and those pamphlets which are attributed to him are by no means destitute of vigour. They are however now read only by the historian, as they possess but few of those graces of style for which the political papers of the next age are so preeminent. The merit of the lighter productions of his pen we can only guess at by the specimen which has escaped to the public, and has been already inserted.*

As an orator, Shaftesbury holds a very high

* Vol. i. p. 306.

station ; his friends have claimed for him, and his enemies have conceded, this excellence. By far the best specimen which has descended to us of his powers as a speaker, is his speech against Cromwell's upper house : this is indeed a masterly production. The others, which were so rapidly printed and circulated throughout the nation, are evidently but abridgments of what he really said. The fame of an orator must be read in the effects of his eloquence : in the most accurate report of the most brilliant speech we miss the presence and energy of the speaker : the mere words give us no idea of his power. The history of the period shows that Shaftesbury's voice was not raised in vain ; and that those speeches, which in their abridged state we read with listlessness, were heard with enthusiasm and roused an entire nation into action.

In this work the religious opinions of Shaftesbury are vindicated as orthodox ; his contemporaries certainly considered him as inclined to deism. Burnet's opinion upon this subject has already been cited, and speaker Onslow in a note upon this passage, published in the recent editions, relates an anecdote somewhat corroborating the bishop's account. Shaftesbury was one day con-

versing in a whisper with a friend, while a lady related to him was in another part of the room. As the conversation proceeded, the earl became less conscious of the lady's presence, and at last observed loud enough to be heard: "Men of sense are all of one religion." "And what religion is that?" unexpectedly inquired the lady. The earl turning round and bowing replied, "That, madam, men of sense never tell."

There is philosophy in this reply. Whatever Shaftesbury's opinions were, he never sought to disseminate them during his life, and he left no record of them to be published after his death. The testimony of his contemporaries is indeed so nearly unanimous upon this point, that it is difficult to disbelieve them without some more specific proof than is here adduced; but if such were his sentiments, he had at least a merit exceedingly rare among those who think with him. His opinions, though noxious, he confined to his own breast; and as he thus kept them from inflicting any injury upon society, they form no ground for influencing the judgment of posterity.]

FINIS.

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THE END.

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